

have the same meaning given to them in the Settlement Agreement.

4. I am a Managing Shareholder of Berger Montague PC (“Berger Montague”) and was appointed by this Court as Co-Lead Counsel for Plaintiffs and the Settlement Class. *See* Dkt. 177 (Nov. 14, 2018 Preliminary Approval Order at p. 4). My prior Declarations submitted in support of Plaintiffs’ Motion for Preliminary Approval and Plaintiffs’ Motion for Attorneys’ Fees and Costs detail, among other things, the history of this litigation and the qualifications of Berger Montague to serve as Co-Lead Counsel.

5. I co-chair my Firm’s Consumer Protection Department and have an extensive background in class action litigation on behalf of consumers, including cases involving defective plumbing products and other products used in the construction industry.

6. I submit this Declaration to provide the Court with additional information pertinent to the Court’s evaluation at the final approval stage of whether the Settlement Agreement satisfies the eighth settlement approval factor set forth in *Girsh v. Jepsen*, 521 F.2d 153, 157 (3d Cir. 1975). This factor requires the Court to evaluate the range of reasonableness of the settlement fund in light of the best possible recovery. *Id.* This Declaration also provides information concerning the adequacy and appropriateness of the Gross Settlement Fund in response to certain assertions made by several objectors to the Settlement. Finally, this Declaration

provides the Court with several additional details relevant to final approval.

I. The Gross Settlement Fund and Data Supporting It

A. The Number of Homes with Reported Leaks Relative to the Size of the Settlement Class

7. The Gross Settlement Fund of \$43.5 million and the associated settlement structure – providing for a minimum recovery level of 25% and maximum recovery level of 70% of eligible economic losses caused by the failure of the Covered Products (depending on Claim volume) – is expected to provide an excellent recovery for Claimants and ensures equal treatment of all Claimants over the duration of the Claim Period.

8. These numbers were negotiated and achieved by Class Counsel during an extensive ADR and mediation process, which was informed by significant discovery and investigation by all parties, and which was overseen by two experienced and well-respected mediators.

9. Prior to and during the mediation process, the Parties each modeled various damage and claim scenarios and presented them to each other under the supervision of the mediators. As in any mediation, Class Counsel presented analyses that were favorable to the Settlement Class and NIBCO presented analyses that were favorable to NIBCO, and the mediators assisted the Parties in reaching a compromise resolution of the claims.

10. NIBCO produced data and information to Class Counsel during the

mediation process on which it based estimates that between approximately 157,759 and 422,344 buildings (mostly residential) incorporated plumbing systems with Covered Products.¹

11. During the phase of settlement negotiations that took place during March 2018, NIBCO also provided information to Class Counsel estimating that it had received reports of approximately 4,860 buildings nationally (mostly residential) that had asserted a leak of a Covered Product. Coe Decl. at ¶ 39.

12. This data was gathered and aggregated by NIBCO from a number of sources, including: (a) NIBCO's warranty records (*i.e.*, warranty claims); (b) pending and threatened lawsuits; (c) claims that had resolved; and (d) individuals who responded to a survey conducted by Co-Lead Class Counsel during the mediation process.²

¹ For the Court's convenience, additional background regarding these estimates can be found in the Declaration of Tom Coe ("Coe Decl.") which is being filed by NIBCO in support of final approval of the Settlement. Mr. Coe is NIBCO's Senior Product Manager for Flexible Piping Systems. *See* Coe Decl. at ¶ 16.

² Specifically, Berger Montague aggregated a number of inquiries about this Litigation that Class Counsel had received from potential Settlement Class Members during its pendency. To further support Plaintiffs' claims during the mediation process, my staff sent a confidential survey to every person that had contacted Class Counsel and inquired about the Litigation. While that communication and the results are privileged, for purposes of settlement only, and subject to FED. R. EVID. 408, my staff produced to NIBCO's counsel summary information regarding the 781 responses to the survey which claimed a leak from a Covered Product, again, without waiving any privilege.

13. NIBCO has since stated that its March 2018 estimate is believed by NIBCO to be conservatively overstated, among other reasons, because it included certain records that were thereafter de-duplicated and other records that did not pertain to a leak of a Covered Product. Coe Decl. at ¶ 44.

14. NIBCO further states that it now calculates that it received reports of leaks of a Covered Product in approximately 4,450 buildings as of shortly before Plaintiffs filed for Preliminary Approval (including Class Counsel's list of survey responders described in footnote 2, above). Coe Decl. at ¶ 42.

15. This estimated number of 4,450 buildings nationally that reported experiencing a leak, when compared to the estimate in Paragraph 10 above of the number of buildings containing the Covered Products, reflects that over the nearly 14 years since the Covered Products were first sold, between approximately 1.1% and 2.8% of the estimated buildings containing the Covered Products reported having a leak where that information was communicated to NIBCO. Coe Decl. at ¶ 47.

16. NIBCO's counsel also informed Co-Lead Class Counsel that of the estimated 4,450 buildings, approximately 1,470 (or 33.03%) are homes located in one of the D.R. Horton, Inc. ("Horton") communities plumbed by Christianson Air Conditioning and Plumbing, LLC ("Christianson") and Dupree Plumbing Co. ("Dupree"), respectively, in San Antonio, Texas and Birmingham, Alabama. Coe

Decl. at ¶¶ 46-48. These 1,470 homes are not included in the definition of the Settlement Class in the Settlement Agreement, are accordingly not at issue in this Settlement, and cannot make a Claim upon the Net Settlement Fund.

17. In fact, Horton, Christianson, and Dupree have all opted out of the Settlement, even with respect to any homes they built or assisted in building that are *outside* of San Antonio and Birmingham, which means they will not make any Claim upon the Net Settlement Fund.

18. The calculated claim rate of between approximately 1.1% to 2.8% described above, drops to a reported claim rate of between approximately 0.7% and 1.9% if the approximately 1,470 homes with alleged leaks in communities built by Horton in San Antonio and Birmingham are excluded.³ Coe Decl. at ¶ 48.

19. Moreover, of the homes in NIBCO's calculation of buildings with reported leaks that are *not* in the communities built by Horton in San Antonio and Birmingham, NIBCO informed Class Counsel during the mediation process that it estimated roughly 1,887 of those homes were assumed to be eligible to participate

³ It is possible that even these percentages are slightly inflated due to the inability to further de-duplicate certain records at this time across sources. NIBCO also asserted during the mediation process that any figures it provided would be overstated for failing to account for causation, meaning that, according to NIBCO, leaks are being counted regardless of the cause, and may include leaks caused by installer or user error, physical damage to the component, or common environmental conditions such as freezing. This was an affirmative defense by NIBCO in litigation (*i.e.*, that someone or some cause other than NIBCO was at fault).

in this Settlement upon the submission of a valid Claim Form after one excluded: (a) previously resolved claims; and (b) claims that were likely to opt out based on previous communications with NIBCO, including the Horton/Christianson/Dupree related claims that were not included in the definition of the Settlement Class.

20. In evaluating the adequacy and appropriateness of the Gross Settlement Fund, the above information is relevant to predicting the number of expected Claims during the Claim Period, which is further discussed below.

B. The Average Cost of Repair Per Home

21. NIBCO estimated and communicated to Class Counsel during the mediation process that its historical average cost to resolve claims for leaks was approximately \$3,080 in cash and/or credits. Coe Decl. at ¶ 41.

22. In response during the mediation process, Plaintiffs proffered that an average claim could be settled for approximately \$9,450. This figure was based on data and information that Class Counsel obtained during discovery and its investigation of the case, including both anecdotal information and consultation with its experts and consultants in the field.

23. Averaging Defendant's historical payment above and Plaintiffs' proffered number resulted in an average predicted claim amount of \$6,265. This number would yield average hypothetical payments of approximately \$1,566 at a 25% recovery level and approximately \$4,385 at a 70% recovery level.

C. Estimating the Number of Expected Claims, Including Based on the Best Available Information – the Claim Activity to Date

24. Based on the \$43.5 Million Gross Settlement Fund and after payment of attorneys' fees and costs, service awards, and administration costs, if the amounts proposed in the Settlement Agreement are approved by the Court, the Net Settlement Fund is expected to be approximately \$28,277,756, calculated as follows:

- \$12,999,975.00 for Class Counsel's attorneys' fees;
- \$1,254,768.94 to reimburse Class Counsel for litigation expenses;
- \$117,500 in service awards to the Class Representatives; and
- \$850,000 for notice and administration costs (approximate).

25. Using the hypothetical average claim amount of \$6,265 described above would mean that the Net Settlement Fund of approximately \$28,277,756 would permit approximately 18,053 Claims to be paid at the 25% recovery level stated above. If the total number of Claims is ultimately less than 18,053, the Settlement Agreement provides a significant uplift mechanism that would increase the payments to up to 70% of Claimants' claimed losses. These percentages were the subject of intense negotiation during the mediation process and the 70% recovery level was one of the last material points to be negotiated in achieving the Settlement. This is a significant achievement for the Settlement Class because other defective plumbing class action settlements have resolved (and been Court-approved) where

the Claimant was entitled to a 25% recovery or less and with no opportunity for an uplift over 25% (let alone an uplift to 70% of losses).

26. At this stage of the settlement approval process, however, the Court need not rely on hypothetical numbers. In fact, the actual Claim Form activity to date supports granting final approval of the Settlement and bolsters Class Counsel's confidence that the models it used during the mediation process were close to the mark, and that the Gross Settlement Fund is appropriate.

27. According to the Settlement Administrator, as of March 17, 2019, approximately 758 Claim Forms have been received, seeking approximately \$4,350,038 in the aggregate, for an average total dollar amount of approximately \$5,739 per Claim – which is less than the hypothetical average of \$6,265/claim described above (which was modeled during the mediation process).⁴ Angeion Decl. at ¶ 45.

⁴ This number of Claims and estimated aggregate amount exclude one unsubstantiated Claim Form on which Angeion believes an error was committed, and approximately 88 Claims that were received from a single known fraudulent filer. Angeion Decl. at ¶¶ 42-43. The number, however, includes Claim Forms where the Claimant asserts that the products were installed in the home before NIBCO started selling the Covered Products or after NIBCO discontinued sales of the Covered Products. Therefore, the Claim Form total reported here may be slightly overstated, but this will be ascertained once Angeion has completed the administration of these Claims.

28. Thus, the Claim Form activity to date (assuming all Claims are valid as stated) translates to an estimated average Claim payout of approximately \$1,435 at the 25% recovery level and \$4,017 at the 70% recovery level.

29. Restated, the 758 Claims received to date would yield a total aggregate payment of approximately \$1,087,730 out of the Net Settlement Fund at the 25% recovery level, leaving over \$27 million to satisfy future Claims during the six year Claim Period. At the 70% recovery level, the 758 Claims received to date would yield a total aggregate payment of approximately \$3,044,886 out of the Net Settlement Fund.

30. Moreover, using the current \$5,739 average per Claim amount as an approximation of future claims, the Net Settlement Fund would support an approximate total of 19,705 Claims at the 25% recovery level, and 7,039 Claims at the 70% recovery level.

31. There are multiple good reasons supporting a prediction of 7,039 to 19,705 Claims, as detailed below.

32. First, the overall claim activity since 2005 as set forth above supports this prediction, when one considers the extensive Notice Plan is expected to result in a doubling or tripling of the number of reported claims. If NIBCO's number of 4,450 is doubled, that would result in 8,900 Claims. Trebling would result in 13,350 Claims. The relationship between a manufacturer's pre-settlement warranty claim

experience and the claims rate in a class action settlement cannot be precisely defined or predicted as it depends on many factors, however, based on my experience in product defect class action cases, it is reasonable to believe that a settlement claim rate here following the extensive Notice Plan will result in between 7,039 to 19,705 Claims.

33. Second, the last of the Tubing was manufactured in August 2012 and sold by early 2013 (*i.e.*, six years ago), and NIBCO substantially ceased selling Fittings and Clamps by the end of 2012 (*i.e.*, seven years ago). Coe Decl. at ¶¶ 4-5; 35-36. This is a factor that is likely to ensure that while Claims are expected during the six year Claim Period, the Net Settlement Fund will not become exhausted prematurely.

34. Third, in order to provide additional certainty, the Settlement reasonably provides that Claims for past damage must be asserted by 150 days after the Effective Date. *See* Settlement Agreement at ¶ 9.a. (“Past Property Damage Claims are those that are based upon Qualifying Leaks that occurred between January 1, 2005 and the Effective Date. Such Claims must be submitted to the Settlement Administrator within 150 days after the Effective Date though the Settlement Administrator may extend the 150-day period for a particular Claimant upon a showing of good cause as determined by the Settlement Administrator.”).

35. Thus, while it is likely that there will be an influx of Past Property Damage Claims by the end of this 150 day period following the Effective Date, the vast majority of the six year Claim Period will be for Claims based on future leaks, and because NIBCO ceased selling the Tubing in early 2013 and ceased selling Fittings and Clamps by late 2012, the rate of future leaks may be less than in the past. This is especially true if NIBCO is correct that the situation in San Antonio, Texas and Birmingham, Alabama represents an anomaly.

36. In sum, the Claim Form activity in this case compares favorably to other defective plumbing parts class action settlements in which the federal courts overseeing them granted final approval when much fewer claims were submitted by the time of the final approval hearing, even though claim windows would remain open for years. *See, e.g., In re Zurn PEX Plumbing Prods. Liab. Litig.*, No. 08-1958, 2013 WL 716088, at *1 (D. Minn. Feb. 27, 2013) (noting “several hundred claim forms” had been filed by the class consisting of “hundreds of thousands of individuals and entities” by the time of the hearing); *George v. Uponor Corp.*, 2015 WL 5255280, at *3-7 (D. Minn. Sept. 9, 2015) (49 claim forms received out of approximately 250,000 class members at the time of the hearing).⁵

⁵ My Firm served as Co-Lead Counsel in *George v. Uponor Corp., et al.*, No. 12-cv-249 (D. Minn.), which involved Uponor’s brass PEX plumbing fittings, a product similar to one of the Covered Products in this litigation. The parties in *George* reached a Court-approved class action settlement wherein Uponor guaranteed funding of up to \$21 million for the reimbursement of repair and replacement costs

37. For these reasons, the amount of the Gross Settlement Fund appears to be an excellent outcome for the Settlement Class based on all available data -- particularly given the substantial legal and factual hurdles and risks that Plaintiffs would have faced moving forward with litigation, which are further detailed in Plaintiffs' and NIBCO's accompanying briefs.

II. Interactions with Objectors

38. Following the dissemination of the Court-approved notice of the Settlement, only seven objections were received from the Settlement Class, which, as estimated above, includes between 157,700 and 422,344 homes or other buildings that incorporated plumbing systems with Covered Products. Coe Decl. at ¶ 18. The objections are detailed in the accompanying Declaration of Steven Weisbrot.

39. Attached as **Exhibit A** hereto is the complete deposition transcript of objector Jeffrey P. Palmer (represented by Christopher Bandas), who was deposed on March 20, 2019.

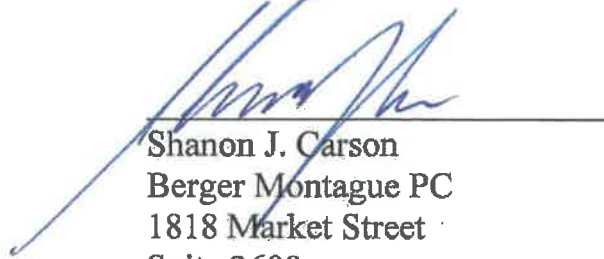
40. Attached as **Exhibit B** hereto is a letter I emailed to counsel for Horton, Christianson, and Dupree on March 19, 2019.

41. Attached as **Exhibit C** hereto is a signed clarifying Amendment to the Settlement Agreement agreed to by counsel for Plaintiffs and NIBCO.

related to leaks or flow issues caused by the Uponor products at issue, and the settlement was approved.

Dated: March 25, 2019

Respectfully,



Shanon J. Carson
Berger Montague PC
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Telephone: (215) 875-3000
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Co-Lead Class Counsel

EXHIBIT A



SHANON J. CARSON / MANAGING SHAREHOLDER
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March 19, 2019

VIA EMAIL

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Re: Nibco Settlement

Dear Counsel:

We write on behalf of all Parties (after meeting and conferring with NIBCO) in an attempt to resolve the objections your clients have raised to the proposed settlement in *Cole v. NIBCO, Inc.*, No: 3:13-cv-07871-FLW-TJB (D.N.J.).

First, your clients have objected to the Release on the grounds that it does not include a “proportionate judgment reduction” provision and leaves your clients potentially liable to Settlement Class Members for leaks resulting from any NIBCO liability for Covered Products. See Horton Objection (Doc. 187) at 13-18; Christianson Objection (Doc. 192) at 24; Dupree Obj. (Doc. 193) at 2. Please note, however, that Paragraphs 34 and 35 provide a complete release of such claims by Releasing Parties against not just NIBCO but also against “plumbers, homebuilders, contractors . . . and any other product or service provider or any other party in the chain of distribution who distributed, specified, recommended, sold, and/or installed the Tubing, Fittings, and/or Clamps.”

The limited exception in Paragraph 35 does not prejudice you. That paragraph, which was carefully negotiated, makes plain that the exclusion extends only to “claims alleging that a party or parties other than NIBCO are wholly responsible for a leak of” a Covered Product (e.g., claims for leaks that are not “Qualifying Leaks”). Paragraphs 34 and 35,

March 19, 2019
Page 2 of 2



taken together, make plain that in any potential action by a Settlement Class Member against you, you are entitled not only to a proportionate reduction of liability for any fault on the part of NIBCO, but also to the full release of claims in the event it is established that NIBCO is even partially responsible. The Settlement Agreement as drafted therefore includes greater protection than the “proportionate reduction” your clients seek because they are included in the definition of “Released Parties.”

Second, your clients have objected to the Settlement on the grounds that the term “Releasing Party” defined in Paragraph 34 of the Settlement Agreement can be interpreted to include, and therefore release the claims of, those who have opted out of the Settlement. See Horton Objection (Doc. 187) at 13-17; Christianson Objection (Doc. 192) at 36-37; Dupree Obj. (Doc. 193) at 2 (incorporating Christianson objections). In response to this objection, please note that the Settlement Agreement does not, and the settling parties did not intend to, treat opt-outs as “Releasing Parties.”

Although we disagree with your clients’ concern and believe the Settlement Agreement is already clear in this regard, Plaintiffs and Defendants have met and conferred and if it would resolve your objections, would discuss a clarifying amendment to the Settlement Agreement that would make this point utterly without ambiguity. For example, a revised Paragraph 34 pursuant to a clarifying amendment could read, in pertinent part, as follows, with the additional language in bold typeface for purposes of this letter:

34. Release. Upon the Effective Date, all Settlement Class Members, as well as any Person who receives any payment from the Net Settlement Fund, on behalf of themselves and their agents, heirs, executors and administrators, successors, assigns, insurers, attorneys, representatives, and any and all Persons who seek to claim through or in the name or right of any of them **(but excluding any Persons who timely opted out of the Settlement with regard to the particular structure(s) for which they opted out) (the “Releasing Parties”)**, release and forever discharge

Please confirm whether this letter resolves your objections. If it does not, we invite you to respond in writing with your basis for disagreement, and are willing to confer with you to determine whether the objections can be resolved.

Sincerely,



Sharon J. Carson

cc: Defense Counsel (via email)

EXHIBIT B

18898
Jeffrey Palmer
March 20, 2019

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

KIMBERLY COLE, ALAN COLE,)
JAMES MONICA, LINDA BOYD,)
MICHAEL MCMAHON, RAY) CIVIL ACTION
SMINKEY, JAMES MEDDERS,) NO. 13-7871-FLW-TJB
JUDY MEDDERS, ROBERT)
PEPERNO, SARAH PEPERNO,)
KELLY MCCOY, LESA WATTS,)
CHAD MEADOW, JOHN PLISK0,)
SUSAN PLISK0, KENNETH)
MCLAUGHLIN, RYAN KENNY,)
ALEXANDER DAVIS, AND)
ANDREA DAVIS, on behalf)
of themselves and all)
others similarly situated,))
Plaintiffs,)
VS.)
NIBCO, INC.,)
Defendant)

VIDEOCONFERENCED ORAL DEPOSITION OF

MR. JEFFREY P. PALMER

MARCH 20, 2019

VOLUME 1 OF 1

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Jeffrey Palmer
March 20, 2019

2

1 VIDEOCONFERENCED ORAL DEPOSITION OF MR. JEFFREY P.
2 PALMER, produced as a witness at the instance of the
3 Plaintiffs, and duly sworn, was taken in the above-styled
4 and numbered cause on March 20, 2019, from 9:06 a.m. to
5 12:51 p.m., before Carol A. Curtis, CSR in and for the
6 State of Texas, reported by machine shorthand, at the
7 offices of Regus, 420 Throckmorton Street, Suite 200,
8 Fort Worth, Texas, pursuant to the Federal Rules of Civil
9 Procedure and the provisions attached hereto or stated on
10 the record.

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A P P E A R A N C E S

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Jeffrey Palmer
March 20, 2019

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MR. JEFFREY P. PALMER

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Jeffrey Palmer
March 20, 2019

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Jeffrey Palmer
March 20, 2019

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1 A G R E E M E N T S

2 MR. SCHWARTZ: We'll -- we'll agree that we'll
3 take the deposition pursuant to the Federal Rules of Civil
4 Procedure. Is that okay, Mr. Stewart?

5 MR. STEWART: Oh, you need to ask Janet, but I
6 assume that's okay. We're having technical --

7 MS. GOLD: I'm sorry. Can you say that again?

8 MR. SCHWARTZ: Janet?

9 MS. GOLD: Yes. Can you hear me?

10 MR. SCHWARTZ: Yes.

11 MS. GOLD: What was the question? I'm sorry.

12 MR. SCHWARTZ: We're going to take the
13 deposition pursuant to the Federal Rules of Civil
14 Procedure.

15 MS. GOLD: That's fine.

16 MR. SCHWARTZ: Okay. Thank you.

17 MR. JEFFREY P. PALMER,
18 having been first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. SCHWARTZ:

21 Q. Good morning, Mr. Palmer. My name is Steve
22 Schwartz. I represent the Plaintiffs in this case. I'm
23 going to be asking you some questions today for your
24 deposition. Could you first please tell us your full
25 name?

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Jeffrey Palmer
March 20, 2019

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1 A. Jeffrey Paul Palmer.

2 Q. And where do you live, sir?

3 A. I live in Nocona, Texas.

4 Q. Have you ever been deposed before?

5 A. Not that I recall, no.

6 Q. Have you ever testified in a trial or other
7 legal proceeding under oath?

8 A. No, I do not believe so.

9 Q. Okay. Why don't we go over some ground rules.
10 First of all, thanks for coming in today, and thanks for
11 working with us with the videoconferenced deposition. The
12 most important rule for a deposition is since our court
13 reporter, Carol, is taking everything down, it's very
14 important for you to wait until I finish my question until
15 you give an answer, and it's just as important for me to
16 wait for you to finish your answer before I ask my next
17 question. So we have to leave a little bit of space, more
18 than usual between question and answer. Okay?

19 A. Not a problem.

20 Q. Also, if I ask a question that you don't
21 understand, just let me know. I'll try to rephrase it. I
22 want to make sure we're communicating effectively so the
23 record that the court reporter takes down is a fair and
24 accurate record of what happens today and what your
25 testimony is. Okay?

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Joseph Palmer
March 20, 2019

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1 A. That will be fine.

2 Q. It's also possible that during the course of the
3 deposition your attorneys will interpose some objections.
4 Unless the objection goes to an area of attorney/client
5 privilege or you get an instruction by your attorney not
6 to answer, you still have to answer my question.

7 So it's not necessary for you to pay attention
8 to the objection. That's for legal issues that the court
9 may have to decide down the road, but I'll still want to
10 get answers to my question unless it impacts or discloses
11 something that's protected by the attorney/client
12 privilege. Okay?

13 A. All right.

14 Q. Is there any reason why you're not prepared to
15 testify truthfully today about issues related to your
16 objection in this class action?

17 A. Not that I'm aware of.

18 Q. Okay. Let's first talk about your brother. And
19 your brother is Joseph Darrell Palmer?

20 A. That's correct.

21 Q. Okay. And I just saw that you -- you -- you
22 smiled when -- when I mentioned your brother's name. What
23 is the -- the current nature of your relationship with --
24 with -- with Joseph? First of all, does he go by Darrell?

25 A. Yes, he goes by Darrell primarily.

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Jeffrey Palmer
March 20, 2019

9

1 Q. Okay. So why don't you first describe what
2 your -- your current relationship is with your brother
3 Darrell in broad terms?

4 A. Oh, we don't have a strong relationship. He's
5 my brother. He lives in Colorado. We communicate
6 infrequently, mostly just about personal issues. I sent
7 him a free food box the other day as a referral off of a
8 box meal service. That's about the most communication
9 I've had with him in the last couple of weeks.

10 Q. Okay. Are you aware that Mr. Darrell Palmer,
11 your brother, has been suspended from practice by the
12 California State Bar?

13 A. I had heard something to that effect, but I'm
14 not familiar with any details of that.

15 Q. Okay. So let's first talk about how you got
16 involved in this. Actually let's talk about other cases.
17 Have you been a -- an objector in any other class actions
18 besides this one?

19 A. Yes, I believe there's one. It's noted in the
20 objection documents.

21 Q. Okay. And do you remember who the defendant was
22 in that case?

23 A. I believe it was Verizon Wireless. It's been
24 some time ago, though, so I'm not -- I'm not going to be
25 real up on the details of that case.

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Jerriey Palmer
March 20, 2019

10

1 Q. Okay. And I guess I should give you another
2 instruction, too, which is, this is not designed as a
3 memory test. If there's something you don't remember,
4 feel free to say you don't remember, if that's the truth,
5 obviously. If there is some fragments that you can
6 remember, feel free to tell me that --

7 A. Okay.

8 Q. -- as well. Okay?

9 A. That's fine.

10 Q. In connection with the Verizon case, do you
11 remember generally what the class action was about?

12 A. No. No, not at this time, I don't.

13 Q. Who was your lawyer in that case?

14 A. That would have been Darrell.

15 Q. And when your brother, Darrell, was representing
16 you in that case, did he ask you to be his client in that
17 case, or did you get a notice and come to him? How -- how
18 did that communication flow work?

19 A. I honestly don't remember. I -- I remember
20 seeing some notice somewhere about it, but I don't recall
21 whether I inquired of him first, or he mentioned it to me.

22 Q. Besides this case -- putting aside this case and
23 the Verizon case, have you received notices in any other
24 class actions that you're a class member and you might be
25 entitled to share in a recovery?

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Jeffrey Palmer
March 20, 2019

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1 A. I received a notice on the Naked Juice case, I
2 believe. And there was one other case that I remember
3 seeing -- receiving a notice on, but I can't tell you
4 exactly what it was.

5 Q. And when you received the -- the notice in the
6 Naked Juice case, did you talk with any lawyer about that
7 notice that you received?

8 A. No, I had no reason to.

9 Q. And when you say you had no reason to, why do
10 you say that?

11 A. I saw no great disparity in the -- the terms of
12 the settlement. Plus the notice would have been received
13 after, I believe the -- the settlement was finalized.

14 Q. Now, in the Verizon case, did you have an
15 economic relationship or any agreements with your brother
16 Darrell about either paying attorneys' fees and what, if
17 anything, you might get paid, and what, if anything, he
18 might get paid in that case in connection with your
19 objection?

20 A. I can't recall any discussion about that.

21 Q. Do you recall what the result was of your
22 objection in the Verizon case?

23 A. No, I do not.

24 Q. Do you recall whether the appeal in that case
25 was dismissed because of a failure of your lawyers to pay

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1 the appeal bond?

2 A. I'm not sure why it was dismissed.

3 Q. Did you ever get any compensation or any
4 payments as a result of objecting in the Verizon case?

5 A. No, I did not.

6 MR. SCHWARTZ: Madam court reporter, I would
7 like to mark as Exhibit 1 the document that is in folder
8 seven, so if you could get that out and give that to the
9 witness.

10 MR. STEWART: There's a folder here. Is that my
11 folder?

12 THE REPORTER: No, actually these came out of
13 the --

14 MR. STEWART: Oh, that's that folder. Okay.
15 I'm just making sure what we're looking at here. Thank
16 you.

17 (Exhibit No. 1 marked)

18 THE REPORTER: Exhibit 1 has been marked.

19 MR. SCHWARTZ: Okay. Thank you.

20 Q. (BY MR. SCHWARTZ) So Exhibit 1, Mr. Palmer, is
21 a copy of a document numbered 128, filed in the -- the
22 Verizon case we're talking about. And can you just verify
23 that this is the objection that was filed on your behalf
24 and on behalf of some others by your brother, Darrell
25 Palmer?

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1 A. That's what it appears to be.

2 Q. Before your brother, Darrell Palmer, filed this
3 objection in the Verizon case, did you read the objection?

4 A. I'm sure I did. That was seven years ago.

5 Q. Okay. When you say you're sure you did,
6 recognizing that -- that you said you -- you can't
7 remember today exactly what you did, would that have been
8 your practice to have read a document like this before it
9 was filed on your behalf?

10 A. Absolutely.

11 Q. Okay. If you go to Page 2, I'm going to ask
12 about some of the objections you made in this case. The
13 very first Roman numeral talks about a cy pres nomination
14 being inadequately explained and improperly matched to the
15 class. Do you see that?

16 A. Yes.

17 Q. Is -- is that something that somehow offended
18 you when you read the -- the notice that you got in the
19 Verizon case? Is that an objection that -- that you
20 raised to your counsel, or is that a counsel that -- is
21 that an objection -- well, I'll leave it with my question,
22 was that -- was that an issue that you identified yourself
23 when you read -- when you read the notice in the Verizon
24 case?

25 A. If you'll give me a moment to read it, I'll

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1 answer that question.

2 Q. Sure. And -- and with all items that I put in
3 front of you, feel free to take as much time as you need
4 to get yourself familiar with it, if that will help you
5 with your answer.

6 A. Okay. Although I don't recall the specific
7 conversation that we had, the objection being put forth
8 does seem reasonable. And had I -- if I had the original
9 settlement in front of me, I could probably make better
10 sense of this and better answer your question, but I'm not
11 sure at this time if that is exactly something we
12 discussed or if that's something -- or if that's something
13 I brought forth or just something we discussed as we were
14 going through the settlement. So to answer your question,
15 I'm not a hundred percent certain how the objection came
16 about.

17 Q. Okay.

18 A. But clearly it was in a -- a reasonable
19 objection to the settlement.

20 Q. But as you sit here today, you can't recall
21 whether you were first offended by the cy pres proposal in
22 the settlement when you read the notice and before you
23 talked with your brother as opposed to your brother,
24 Darrell, identifying the issue for you; is that fair?

25 A. I'm sure we probably discussed it since not

1 being an attorney myself, I'm not terribly familiar with
2 the term "cy pres."

3 Q. Do you recall in this Verizon case that the cy
4 pres proposal was only for money left over from uncashed
5 checks after checks were provided to class members and
6 efforts were made to identify class members who did not
7 cash their checks so that -- that the cy pres gifting, so
8 to speak, was only going to be for a residual amount left
9 over in the settlement fund from uncashed checks? Do you
10 remember that detail?

11 A. No, I do not remember that.

12 Q. Okay. On Roman numeral two on -- of this
13 objection that you filed in Verizon, and that's on Page 4,
14 the heading is that the requested attorneys' fees are
15 reasonable. Do you see that?

16 A. Yes, I can see that.

17 Q. And -- and -- and I'm not going to ask you to --
18 to read and -- and give me any arguments pro or con for
19 the objection. I just want to ask you whether -- whether
20 the issue of the amount of attorneys' fees was something
21 that you identified yourself when you read the notice and
22 said to yourself, Wow, I think these attorneys' fees are
23 unreasonable, I want to object to them, or rather that was
24 a thought that you only got after you consulted with your
25 brother.

1 A. Again, I'm not certain I recall that exactly,
2 but looking at this, the amount of the attorneys' fees do
3 appear to be somewhat unreasonable to me.

4 Q. Are you aware that your brother had a practice
5 of objecting to class action settlements, having the
6 objection denied, filing a notice of appeal, and then
7 extracting a payment from class counsel in exchange for
8 dismissing the appeal with no additional compensation or
9 benefits going to the class? Are you aware of that
10 practice by your brother?

11 A. I -- I'm not privy to my brother's legal
12 practice. I'm aware that he dealt with --

13 Q. So is the ans --

14 A. I'm aware that he dealt --

15 Q. I'm sorry. Go ahead.

16 A. Yeah, I'm sorry. I am aware that he dealt with
17 class action cases, but I was not privy to how he did his
18 business or ran his practice.

19 Q. So have you ever heard from anyone that your
20 brother had a practice, your brother, Darrell, had a
21 practice of dismissing appeals of class action settlements
22 in exchange for money paid to him with no corresponding
23 benefit to the class? I'm just asking if you're familiar
24 or have ever heard that about your brother?

25 A. No.

1 Q. Have you ever had a concern that your brother
2 was being paid attorneys' fees that were excessive in
3 light of the benefit he achieved for the classes he
4 purported to represent and objections that he filed?

5 A. Not having been privy to his legal practice, it
6 would be difficult for me to express concern about
7 something that I'm not aware of.

8 Q. Okay. So you are not aware of -- of that
9 practice, and that's what I'm hearing; is that correct?

10 A. That's correct.

11 Q. Okay. Why don't you tell me a little bit about
12 yourself. Why don't you take me through your education
13 after high school?

14 A. I spent two and a half years at Oral Roberts
15 University undergraduate, transferred from there to the
16 University of Northern Colorado where I spent a quarter
17 and left college for some time. I don't recall exactly
18 how long it was after that that I attended a semester at
19 Grossmont College in San Diego.

20 Q. Did you ever get a degree from college?

21 A. No, I did not.

22 Q. Okay. In terms of your profession, and I don't
23 want to hear about every odd job you may have had, but why
24 don't you tell me what your professional vocation is
25 today, and if it's considerably different from earlier

1 decades, just let me know?

2 A. Today I primarily run a cabinet shop and also do
3 some kitchen remodeling. In the past, since we moved to
4 Nocona, Texas, I have done remodeling and built a couple
5 of homes, run of gamut of pretty much handling all the
6 trades from the ground up. I have done electrical work
7 since I was about 11 years old, started wiring the house
8 that we were building for ourselves in Okmulgee, Oklahoma.

9 When I was in San Diego, I ran a general
10 contracting business. My partner there was a licensed
11 plumber, so I learned a lot about plumbing working with
12 him. His name is Stan Hardin. He is also still a
13 licensed plumber in Denver, Colorado.

14 Q. As a result of working with Mr. Hardin, did you
15 become sufficiently conversant with the ins and outs of
16 plumbing, that you would perform plumbing services as part
17 of work you did as a -- as a contractor?

18 A. Yes.

19 Q. I don't want to talk about things like gift
20 baskets and little things like that, but today or -- or in
21 the last ten years, have you provided any material
22 financial assistance to your brother, Darrell Palmer?

23 A. What would you define as material?

24 Q. Any annual gifts over, say, \$1,000, gifts, you
25 know, help him pay his rent or whatever?

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1 A. Well, my brother suffered a massive stroke a
2 couple of years ago, so since then, we have helped him
3 out, but I don't think I've ever given him anything that
4 would amount to over \$1,000 within a calendar year.

5 Q. Okay.

6 A. We did rent him an apartment.

7 Q. Besides -- I'm -- I'm sorry. Go ahead.

8 A. We did rent him an apartment at a building that
9 we own in Nocona for some time, but we didn't even reduce
10 the rent from what we typically get. We did some things
11 to make it --

12 Q. Okay. And he paid?

13 A. Yeah. Yes, he paid the rent.

14 Q. And he paid the rent?

15 A. Yes.

16 Q. Okay. Besides this case and the Verizon case we
17 talked about, have you consulted with any other attorney
18 about possibly objecting to a class action settlement?

19 A. No, I've not.

20 Q. How did you first hear about this class action
21 settlement in the NIBCO case?

22 A. My brother, Darrell, made me aware of it.

23 Q. What did he tell you?

24 A. He asked me if we had used these fittings
25 somewhere and told me that there was a case, and I don't

1 recall exactly the conversation. He knew that we had
2 redone plumbing on several buildings in town about that
3 time period, suggested that I look into it, asked if I had
4 had any damages as a result of those fittings, since that
5 was the -- the core issue with the case.

6 I told him, yes, we had had those fittings in --
7 installed in the house on Northcott Street, and we had
8 actually had a leak that looked like the fittings were
9 corroded. And I found it odd that they would have failed.

10 Q. Is there anything else that your brother told
11 you in this conversation about this case?

12 A. I don't recall exactly what else was discussed
13 in the conversation, nothing material beyond that. Other
14 than he suggested that I might contact Mr. Clore.

15 Q. Mr. who?

16 A. Rob Clore. He's an attorney with the Bandas
17 firm.

18 Q. Okay. That's C-l-o-r-e?

19 A. That's correct.

20 Q. Did your brother give you the website that had
21 any information about the class action settlement?

22 A. I don't recall whether he gave me the
23 information or if I simply looked it up through a web
24 search.

25 Q. Did you review anything on the website, either

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1 the claim form or the frequently asked questions or the
2 settlement agreement or anything else, before you reached
3 out to the Bandas firm?

4 A. Yes, I did.

5 Q. Now, you said something that when you were
6 talking with your -- your brother, or at least talking
7 about your answer about your conversation with your
8 brother, that you found it odd that these fixtures that
9 you mentioned that you thought were NIBCO fixtures leaked.
10 Do you remember that?

11 A. Yes, I do.

12 Q. So why don't you take me back in time, and I --
13 I think it was 2014, but tell me if I'm wrong, but what is
14 it about these fixtures that are leaking -- that were
15 leaking that you thought were -- was odd?

16 A. There seemed to be an unusual amount of
17 corrosion for something that was no older than they were.

18 Q. And what conclusion did you draw when you saw a
19 plumbing fixture leaking prematurely and having corrosion?

20 A. That I should replace it.

21 Q. That -- that's -- that's a good conclusion. Did
22 you also reach a conclusion that maybe there's something
23 wrong about the fixtures?

24 A. Yes, it did appear that it was defective, but I
25 had no way to know whether that was a common thing for

1 that particular item or if I had just gotten one oddball
2 faulty fitting.

3 I assumed that it was a couple of oddball faulty
4 fittings that had leaked that had caused my problem. So
5 although I took note of what they were, I did not save
6 them. It wasn't worthwhile to file an insurance claim for
7 that amount of money, considering the deductible that I
8 had, so I simply repaired what needed to be done.

9 Q. And about how much money did the -- the failure
10 of the fittings cost you in terms of not just replacing
11 the fittings, which don't cost that much, but in terms of
12 damage that had to be repaired?

13 A. We ended up getting an entire bathroom, so we
14 spent about a little over \$2,000. I believe there's a --
15 an invoice that we've provided detailing those damages a
16 little bit more thoroughly.

17 Q. Is it fair to say that, and tell me if I'm
18 wrong, do you have a -- do -- do -- is your memory -- let
19 me ask the question this way. Do the invoices provide the
20 best current evidence of how much it cost you, or do you
21 have an independent memory about those numbers? I'm just
22 trying to get a sense of how good your memory is compared
23 to what we see in the documents.

24 A. I would say the documents are probably the best
25 indication, although I'm sure they don't actually reflect

1 all of the costs that would have been involved in doing
2 the repairs.

3 Q. Now, when these fittings failed prematurely, did
4 you consider picking up the phone and calling your
5 brother, Darrell Palmer, since he's a class action lawyer,
6 to see whether there was anything he might be able to do
7 to help you?

8 A. Again, since I -- it appeared to me that it was
9 probably a couple of fittings and an unusual case at the
10 time. I didn't even have any consideration that a class
11 action might be something to consider at that point.

12 Q. And -- and do you remember what your deductible
13 was for your insurance? Where you said it wouldn't be
14 worth file -- filing a claim, given the deductible, how --
15 how much was that if you remember?

16 A. Typically in Texas, you have one percent
17 deductibles on those policies. I would have to go back
18 and look specifically to see what we had that building
19 insured for at the time, but it would have been somewhere
20 in the neighborhood of 1,000 to \$1,500.

21 Q. And is that why you figured it wasn't worth your
22 while to file an insurance claim? You just wouldn't get
23 that much money back after the deductible?

24 A. Well, it's a -- a two-fold answer. One, you
25 wouldn't get that much money. Secondly, when you file an

1 insurance claim, rates on that building are going to
2 continue to go up slightly. And when you add that up over
3 the years I intended to own that structure, it would cost
4 me more to file the claim and pay higher rates for the
5 next ten years than it would cost me simply to repair the
6 damage.

7 Q. Is it fair to say that at the time you reached a
8 conclusion that there was no economically viable way for
9 you to get reasonable compensation for the damages you
10 suffered from these fitting failures?

11 A. I'm not sure if there may have been another
12 economically viable way to get some compensation, but it
13 was not worth my time at the mo -- moment for that amount
14 to spend researching that.

15 Q. Okay. Now, you will be getting some
16 compensation or you expect to get some compensation as
17 part of this class action settlement. Is that your
18 current expectation?

19 A. Most definitely. If it wasn't, I would not be
20 here.

21 Q. So are you pleased that there were people like
22 you who had NIBCO PEX products that had failed who took
23 the effort and had class action lawyers who took the
24 effort in order to bring a lawsuit and generate the
25 settlement fund so you can get compensation? Are you --

1 are you pleased that that happened?

2 A. I am pleased that the lawsuit was filed and that
3 there is the possibility of a reasonable settlement. And,
4 of course, anyone is always pleased with the idea that
5 they could get some money from something where they had
6 already written it off.

7 Q. Why don't you -- well, I'll -- I'll get to that
8 in a -- in a bit. Let's take a look at the declaration
9 you filed in this case. We'll mark that as Exhibit 2.

10 MR. SCHWARTZ: And, Madam court reporter, that
11 is in folder number nine.

12 THE REPORTER: Excuse -- excuse me. What number
13 folder?

14 THE WITNESS: Nine.

15 MR. SCHWARTZ: Nine.

16 THE REPORTER: Thank you.

17 MR. STEWART: Make sure you keep this organized
18 so that she doesn't get mad at you later.

19 THE WITNESS: Okay.

20 (Exhibit No. 2 marked)

21 THE REPORTER: Exhibit 2 has been marked.

22 MR. SCHWARTZ: Thank you.

23 Q. (BY MR. SCHWARTZ) And one other instruction
24 which is important, which is when you leave today, do not
25 take the original marked exhibits with you. We've had

1 that experience with some other cases, and it always
2 causes confusion.

3 So Exhibit 9 -- no, I'm sorry. Exhibit 2 is a
4 document filed in this case as ECF Document Number 184-1.
5 And if you take a look at the second page, it's a
6 declaration of Jeffrey Palmer. And if you then take a
7 look at the -- at page Number 5 of the document, it has
8 your signature declaring that the statement is true and
9 correct under penalty of perjury. Do you see that?

10 A. Yes, I do.

11 Q. Okay. And you understood when you signed this
12 declaration that -- that you were taking an oath that it
13 was truthful and accurate just like you took today,
14 correct?

15 A. That's correct.

16 Q. Did you read this declaration carefully before
17 you signed it?

18 A. I not only read it, but I did go through it and
19 edit cer -- certain things. I don't recall exactly what,
20 but it would be fair to say that I was very involved in
21 the drafting of this document.

22 Q. Okay. And now I want to -- your lawyer may tell
23 you this at some point, too. I don't want you to divulge
24 the substance of communications you had with your lawyers
25 at the Bandas firm or with Ms. Gold or with Mr. Stewart.

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1 There are some things I do want to ask you about, though.
2 First of all, Ms. Gold, have you ever -- and this is a yes
3 or no. Have you ever spoken with Ms. Gold or anyone from
4 her firm?

5 A. Yes, I have.

6 Q. Do you have a signed retainer agreement? This
7 is another yes or no. Do you have a signed retainer
8 agreement with Ms. Gold's firm?

9 A. Yes, I do.

10 Q. And I don't think we got on the record the name
11 of Mr. Stewart's firm.

12 MR. SCHWARTZ: Mr. Stewart, could you enter your
13 appearance on the record for the court reporter?

14 MR. STEWART: Sure. Huseman Law Firm in Corpus
15 Christi.

16 Q. (BY MR. SCHWARTZ) So, Mr. Palmer, do you have a
17 signed retainer agreement with Mr. Stewart and his firm?

18 A. I don't recall. I would have to look at the
19 documents that I have, but I believe so.

20 Q. Are you paying anything out of your pocket for
21 either Ms. Gold's firm or Mr. Stewart's firm?

22 A. I have not as yet.

23 Q. Do you -- do you have any obligation to pay them
24 anything out of your own pocket?

25 A. I don't believe so.

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1 Q. Do you know how they're getting paid in this
2 case?

3 A. Well, that would depend on the success of their
4 objection.

5 Q. Do you know whether Mr. Bandas and his firm is
6 paying Mr. Stewart's firm and Ms. Gold's firm an hourly
7 rate that's not contingent on the degree of success or
8 failure of their objections?

9 A. That's not really anything that I would be privy
10 to.

11 Q. And let's talk about the Bandas firm. Are
12 you -- do you have any obligation to pay the Bandas firm
13 anything?

14 A. I don't believe I've made any such obligation.

15 Q. Do you know how the Bandas firm is going to get
16 paid in this case, if at all?

17 A. I'm not absolutely certain how they would be
18 paid, no.

19 Q. Are you expecting to get -- to get paid anything
20 in this case depending on the success or failure of the
21 objection?

22 A. I expect to be paid the claim that I filed.

23 Q. Okay. Putting aside the -- let's talk about the
24 claim that you filed. It's your expectation that you
25 would get paid on your claim the same way each and every

1 other class member would get paid on their claim based on
2 merits -- the individual merits of their claim; is that
3 fair?

4 A. That's a fair statement.

5 Q. Besides getting this payment that you're
6 entitled to for your claim, do you have any expectation
7 that you will get paid anything else in addition to that
8 due to the fact that you filed this objection?

9 A. I have minor understandings of how this process
10 works when it comes to the federal court. I understand
11 that there's a possibility that there may be a minor
12 payment, but it's not going to be anything significant.

13 Q. Do you know whether any payment that you could
14 possibly get in addition to the payment for your claim, do
15 you know whether that's a payment that has to be approved
16 by a judge or not?

17 A. I would assume that it would have to be approved
18 by a judge, but again, I'm not an attorney, so I'm not
19 intimately familiar with all of the workings of that.

20 Q. Is it your expectation that the Bandas firm will
21 not receive any money in attorneys' fees unless it
22 achieves some benefit for the class in connection with the
23 objection that it has filed?

24 A. That seems a reasonable understanding, yes, that
25 I would expect them to gain some benefit for the class, or

1 else if that were not the case, this entire proceeding is
2 useless.

3 Q. So is it your understanding that unless the
4 Bandas firm can actually achieve some benefit for the
5 class, that it should -- it will not be getting paid
6 anything for the time it spends prosecuting the objection?
7 Is that your understanding?

8 A. I'm not sure how the term "prosecuting" applies,
9 but it's my understanding that they'll only get paid if
10 they are able to receive or to make a favorable
11 improvement to the settlement.

12 Q. And does that seem fair to you?

13 A. Definitely it seems very fair to me. They
14 should be paid if they are able to improve the settlement
15 for all of the other class members and myself.

16 Q. And the flip side, does it also seem fair that
17 if they can't improve the settlement, that they should not
18 get paid because they did not create a benefit?

19 A. It's not my place to consider the -- the ethics
20 of something like that. But on the face of it, I would
21 say that that seems fair. If they're going to try to
22 improve a settlement, they should be paid for improving
23 the settlement. And if they fail, it seems reasonable
24 that they would not be paid for that. It seems common;
25 however --

1 Q. Is that -- okay. Go ahead.

2 A. It seems common to the legal process, from what
3 limited knowledge I have of it, that attorneys often
4 attempt to create better settlements or take cases where
5 they incur no financial benefit if they don't succeed.

6 Q. I'm sorry. Could you -- could you restate that
7 answer. I just want to make sure I understood it correct.

8 A. It seems common to me that attorneys often take
9 cases where they don't get paid if they don't get a
10 result.

11 Q. For example, my firm and the other firms who
12 represent the class in this case, if we had lost the case
13 and, therefore, delivered no benefit, it wouldn't strike
14 you as unfair that we don't get paid, even though we would
15 have spent millions of dollars on the case; is that fair?

16 A. To discuss whether that's fair or not seems a
17 greater ques -- question than what these proceedings are
18 for. That would require a rework of our entire legal
19 system to make that fair.

20 Q. Okay. I hear you. So let's just go through
21 your declaration that we've marked as Exhibit 2. Okay?

22 A. Okay.

23 Q. On the -- on the -- the page that's numbered
24 Page 1, in the third paragraph, You say you own a
25 residential structure, right?

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1 A. That's correct.

2 Q. And then on the fourth paragraph, you wrote in
3 your declaration, I completed a claim form with
4 attachments and forwarded it -- forwarded it to the
5 settlement administrator by e-mail as instructed by the
6 class notice. Do you see that?

7 A. Yes.

8 Q. And that is a truthful and accurate statement,
9 right?

10 A. Yes, it is.

11 Q. So tell me about the process you went through to
12 complete the claim form.

13 A. I downloaded the claim form. I filled it out on
14 my laptop with an Adobe PDF software and consulted with
15 Mr. Clore through the process, as the form is very
16 cumbersome and difficult to negotiate. And when we had
17 gone back and forth several times making sure that every
18 single for -- or every single blank was filled out with an
19 NA where it was not applicable to the claim, I gave it a
20 final review and forwarded the e-mail as instructed.

21 Q. And how about the attachments? What did you
22 have to do to gather those?

23 A. I went through my files and scanned them in
24 using my scanner in my office.

25 Q. Okay. Let's -- let's go to Page 3. Before you

1 go to Page 3, when you gathered those documents from your
2 file, they were just documents you had kept in your files
3 from the work that you had done that was relevant to this
4 claim?

5 A. Yes. Yes, that's correct.

6 Q. So on Page 3, in the first full paragraph, you
7 say that you specifically recall the yellow brass fittings
8 with the word "NIBCO" stamped on them. Why don't you
9 just -- just give me some more detail about what your
10 recollection is about that?

11 A. Frankly, the word "NIBCO" is an odd word. It's
12 kind of funny sounding, so it struck me as amusing.
13 That's probab -- probably why I made note of it.

14 Q. When you went to get the fittings for that
15 particular project, did you care whether it was a NIBCO
16 fitting versus some other branded fitting, or did you just
17 care that it was a fitting that it could be used with a
18 PEX-type tubing?

19 A. I was just looking for a PEX tubing fitting. I
20 was not looking --

21 Q. And why don't you tell me what your -- I'm
22 sorry. Go ahead.

23 A. I was not looking for a specific brand.

24 Q. So the fact that you got a PEX -- a NIBCO
25 fitting was just luck of the draw?

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1 A. That's what the local lumberyard had on their
2 shelves at the time.

3 Q. And why don't you just describe to me what your
4 understanding is of what a PEX tubing or PEX product is?

5 A. It's a plastic tubing that is attached to
6 different fittings with a crimp ring. I've used it pretty
7 extensively both in California and in Texas. I'm not sure
8 exactly what you're ask -- asking my understanding of.

9 Q. Oh, just -- just trying to get a general
10 description of how a PEX plumbing tubing might differ from
11 a copper plumbing tube or some other type of plumbing
12 tube.

13 A. Well, the -- the PEX tubing is the evolution of
14 the old QUEST fittings which -- or QUEST tubing system,
15 which was similar, although a thinner wall. The plastic
16 was a little bit more brittle, and there was a -- a lot of
17 damage that resulted from the original QUEST fittings.

18 PEX was an upgraded system. The beauty of the
19 PEX system is that they will withstand freezing, allowing
20 you to put them somewhere where it might occasionally
21 freeze without bursting the pipes. That's one of the
22 things that makes the PEX appealing over the copper --
23 using copper tubing in a house.

24 Q. And without going through the rest of the
25 written portion, Pages 1 to 5 of your declaration, is

1 there anything, as you sit here today, that you think is
2 not accurate in Page 1 to 5 of your declaration?

3 A. No, I believe everything in this declaration is
4 accurate.

5 Q. Okay. So let's go to Page 1 of the claim form
6 that's attached. This is Page 9 of 25 of the -- of the
7 court stamps on the top of the page, but do you see Page 1
8 of the claim form NIBCO PEX settlement administrator right
9 up at the top?

10 A. Yes, the first page that has things filled out
11 with the information and address.

12 Q. Now, I think you said that you went on the
13 website before -- after you talked with your brother,
14 Darrell, but before you talked with the folks at the
15 Bandas firm; is that correct?

16 A. That's correct. I did peruse the website.

17 Q. Okay. When you say you perused it, can you tell
18 me whether you looked at the frequently asked questions?

19 A. I don't recall.

20 Q. Why don't you tell me what you recall in terms
21 of either what you looked at or the information that you
22 gleaned from your, as you call it, a perusal of the
23 website before you spoke with the Bandas folks?

24 A. I believe there was a -- a summation or a --
25 what's the term I'm looking for -- just a basic

1 description of what the settlement was. I looked through
2 that. I looked briefly at the claim form. It seemed
3 unusual the way that the -- the settlement was structured.
4 I thought it would be worthwhile to contact the Bandas
5 firm to see what they thought of it.

6 Q. Okay. Let's stick to the time before you talked
7 with the Bandas firm. What was unusual about the
8 structure that you identified by yourself?

9 A. Well, I think some of those things are well
10 outlined in the objection. One of them being a claim form
11 that seems quite onerous. The other thing being an
12 unusual lag in time to get a claim paid. It seems to be
13 a -- a bit out of the ordinary for a class action
14 settlement or any type of claim, for that matter.

15 Q. Okay. I just want to make sure we're talking
16 about the right time frame. Those are two issues that
17 you're telling me that you identified by yourself before
18 you spoke with anyone from the Bandas firm; is that
19 correct?

20 A. That's correct.

21 Q. And is it also correct that those were two
22 issues that were not identified for you by your brother,
23 Darrell?

24 A. There -- my brother, Darrell, and I didn't
25 discuss anything other than the fact that there was a

1 settlement involving the NIBCO PEX fittings and that I had
2 used some of those.

3 Q. Can you unequivocally state that your brother
4 Darrell, will not receive a single penny of money related
5 to your objection or to this case?

6 A. I can unequivocally state that he will not
7 receive any -- a penny from me. As far as what
8 arrangement he has anywhere else, that's beyond my ability
9 to speak to.

10 Q. Can you guarantee me that he will not receive
11 any money from either the Bandas firm or Mr. Stewart's
12 firm or Ms. Gold's firm or from any other attorney who may
13 represent you in this case?

14 A. I can only guarantee you that I'm unaware that
15 any such arrangement has been made. I am not their
16 keeper. I certainly cannot dictate what they do, but I am
17 certainly not aware of -- of any such arrangement, would
18 not be approving of an arrangement that's contingent like
19 that.

20 Q. Now, you said that one of the issues you
21 identified by yourself before you spoke with the Bandas
22 firm -- and actually just to set the table, you first
23 spoke with the Bandas firm and the only reason that you're
24 being represented by Mr. Stewart's firm and by Ms. Gold's
25 firm is because Mr. Bandas hired them. Is that -- is that

1 a fair description of how that worked?

2 A. That's a fair assessment.

3 Q. Do you know why the Bandas firm needs
4 Mr. Stewart's firm, another Texas firm, to represent you?

5 A. I would assume it's because Mr. Stewart holds
6 some expertise that would be beneficial in this case.

7 Q. Do you know what the scope of Mr. Stewart's
8 responsibilities are for the objection? Is he just
9 representing you for this deposition, or is he helping you
10 and representing you for the overall objection? Do you
11 have any sense of what the scope is of Mr. Stewart's role
12 here?

13 A. Only in that I know that he's been helpful to me
14 for these proceedings.

15 Q. Without telling me the substance of discussions,
16 tell me what you did to prepare for this deposition,
17 including how much time you spent with your attorneys,
18 whether you looked at documents. Just give me a
19 description of what you did to prepare for your deposition
20 today.

21 A. Well, the last thing that I did to prepare was I
22 read through the objection again this morning to
23 refamiliarize myself with some of the details of it. I
24 spent a few hours yesterday going over just typical
25 deposition behavior and, you know, the way you would want

1 to answer a question and not answer a question.

2 Q. Did you look at -- besides reviewing the
3 objection, did you review any other documents to prepare
4 for the deposition?

5 A. We reviewed a few of the documents involved in
6 this case, but --

7 Q. Documents that were filed with the court?

8 A. I'm not aware of what is specifically filed with
9 the court and what's not filed with the court, so it would
10 be difficult for me at this time without going back and
11 getting those documents and looking at them to tell you
12 what has or has not been filed with the court.

13 Q. Perhaps meaning you don't live in our world, you
14 live in your world?

15 A. That -- that is a good thing. That's -- that's
16 why I am not an attorney.

17 Q. About how much time did you spend with your
18 attorneys preparing for the deposition?

19 A. I believe it was about three to four hours at
20 the most.

21 Q. And which attorneys did you meet with or have on
22 the phone with you for this preparation?

23 A. I spoke with Mr. Stewart and with Mr. Bandas and
24 also with Rob Clore.

25 Q. Was everyone in person with you or some people

1 on the phone?

2 A. Mr. Stewart was with me. The rest are on the
3 phone.

4 Q. Did Ms. -- Ms. Gold participate in that
5 preparation?

6 A. I spoke with Ms. Gold a few days ago, and I'm
7 trying to remember if we spoke to her yesterday or not.
8 I -- I don't recall exactly if she was on the phone at
9 some point.

10 Q. Okay. So we took a little detour. Let's go
11 back -- we're talking about thoughts that you had before
12 you spoke with the Bandas firm, and you mentioned
13 something that you thought was unusual in class actions or
14 any other settlements was a lag in the time to get paid.

15 Why don't you tell me what your thought process
16 was? And as best you can, let's keep it for what your
17 thought process was before you talked with Bandas and the
18 other attorneys. Okay?

19 A. Well, it's -- it's difficult to go back and say,
20 This was my thought then, this is my thought now, and
21 generally thoughts evolve. But certainly looking at that
22 at its face, looking at a six-year lag for the majority of
23 the payment in a claim, having worked as a claims adjuster
24 for some time, that seems very unusual.

25 When I worked for State Farm, they wanted us to

1 get a -- a check to a customer within a certain number of
2 hours, not years.

3 Q. Besides the NIBCO fittings that are the subject
4 of your claim, those specific ones, are there any other
5 NIBCO products in any other property that you own or did
6 own or might have responsibility for in connection with
7 any plumbing work or other work you or your companies did?

8 A. Possible, but without going back and tearing out
9 walls to look at specific fittings, it would be difficult
10 to -- to state that unequivocally.

11 Q. Okay. So it's possible that there's some NIBCO,
12 either fittings or tubing, in some of your other
13 properties or were used in connection with work you did,
14 but you just don't know for sure as you sit here today; is
15 that fair?

16 A. That's a fair statement.

17 Q. And given the fact that there is this class
18 action that you had NIBCO fittings that did not perform,
19 there's at least the possibility that there could be other
20 NIBCO PEX failures that impact the work you did or the
21 properties that you own. That's -- that's a possibility,
22 right?

23 A. That's a possibility.

24 Q. And I -- I -- I think this is an obvious
25 question, but I have to ask it so I get the answer. Is it

1 fair to say that if over the next six years you have a
2 situation where either a property you own or a -- a job
3 that you did has damage caused due to a failure of a NIBCO
4 product, you're going to want to get compensation from
5 this class action settlement if -- if the failure meets
6 the standards for payment; is that fair?

7 A. That would be a fair statement.

8 Q. Would it also be a fair statement that -- and,
9 again, I'll take you as an example, but it could really
10 apply to any other class member. If there is a failure
11 that happens five years down the road, you would not be
12 happy if you get less for that payment that's -- than
13 someone who gets paid for a failure that happened one year
14 ago because the settlement funds ran out?

15 A. That would be a fair statement for any class
16 action suit that's filed.

17 Q. When you were at State Farm, were -- were you --
18 was your job function to determine whether or not State
19 Farm would approve claims for payment?

20 A. Yes. As -- as a catastrophe adjuster, my job
21 was to go out, inspect claims, determine what the cause
22 was, and quite often make a payment on the spot.

23 Q. I'm not going to get too, you know, deep at all
24 into this issue, but is it fair to say based on your
25 experience as a claims adjuster for -- for State Farm,

1 either for cases that you worked on or certainly for what
2 I'll call in general the work that State Farm and other
3 insurers do, a lot of times there are a lot of claimants
4 who think that insurance companies are very difficult to
5 deal with in terms of getting payments approved for
6 claims.

7 You -- you've -- you've heard some instances
8 like that where there had to be litigation to determine
9 whether or not State Farm or insurers would pay claims
10 that should be paid, right?

11 A. It's difficult to enter that sort of hearsay
12 into evidence, but certainly you hear all sorts of things
13 in the world. It's never been my experience that it was
14 difficult to deal with the State Farm's claims pro --
15 process when I was involved as an adjuster because it was
16 a fairly painless process.

17 Q. Well, next time I have to get new insurance,
18 maybe I have to see if I can get someone like you, but --
19 but put -- putting that aside, are you aware that -- no, I
20 don't want to ask that question. I'll move on.

21 So let -- let's go back to the claim form. This
22 is Exhibit 2, and we're on Page 1 of the claim form. And
23 Page 1 is -- and it goes on to Page 2. There's some
24 instructions.

25 Were there any instructions on Pages 1 to 2 that

1 you did not understand when you read them?

2 A. No, the first two pages appear fairly
3 informational. It may not be worded extraordinarily well,
4 but they're understandable.

5 Q. If you take a look at Page 1, at the bottom,
6 there's a footnote where it talks about definitions of
7 capitalized terms, that they could be found in the
8 settlement agreement, which could be downloaded at the
9 settlement website, pexsystemsettlement.com. Do you see
10 that?

11 A. No, it doesn't appear on the document I'm
12 holding.

13 Q. I'm sorry. So it's Page 1 of the claim form.

14 A. Uh-huh. That's correct.

15 Q. At the very bottom of Page 1, there's a footnote
16 number one?

17 A. No, there is not on the document that I'm
18 holding. It -- the bottom thing on Page 1 is simply the
19 number three. Position or title, there's a three under
20 it. Anything beyond that is gone on my form. If you're
21 talking about the first informational page or -- okay.
22 You're talking about --

23 Q. Yeah.

24 A. You're --

25 Q. Yes.

1 A. Okay.

2 Q. Yeah, it's the first informational page.

3 A. Okay.

4 Q. Do you see a footnote on there?

5 A. Sure, I see that.

6 Q. Okay. So did you personally go onto the website
7 to look up any definition of any capitalized term?

8 A. No, I did not.

9 Q. If you were interested in doing that, is it fair
10 to say that you would have plugged the website into your
11 browser, gone onto the settlement website, opened up the
12 settlement agreement, and looked in the definition section
13 to see the defined term? Is that what you could have done
14 if you wanted to do that?

15 A. I probably would have done that, yes. I find
16 that the average consumer probably would have gotten
17 frustrated at that point and thrown the thing in the
18 trash, though.

19 Q. Well, do you think the average consumer -- and
20 we can talk about you, I guess. Maybe you consider
21 yourself the average consumer. Do you think it would have
22 been beneficial to put a long list of defined terms and
23 definitions in a claim form for the class members or for
24 you to slog through and try to complete a claim form?
25 Would that have been a good idea?

1 A. It would depend on how long that list was. The
2 informational page on the front is in fairly small print
3 and has a lot of detail. I don't think one more page like
4 that would have been very difficult or very cumbersome for
5 someone.

6 Q. Do you have any idea whether putting in all the
7 defined terms of the settlement agreement would have just
8 taken one page?

9 A. No, I don't.

10 Q. And you haven't looked at the settlement
11 agreement or the definitions section of the settlement
12 agreement, have you?

13 A. I don't recall if it's in any of the physical
14 forms that I looked at. I did not browse that on the
15 Internet, no.

16 Q. And you would acknowledge that in preparing the
17 documents, such as a claim form like this, that there has
18 to be a balance between having enough information that's
19 understandable to the average person, not lawyers who are
20 different from the average person, having a balance
21 between having enough information and being understandable
22 for the average person and lawyering it up with too much
23 excess information that just frustrates. Do you at least
24 acknowledge it has to be a balance between those two; is
25 that fair?

1 A. Certainly there has to be a balance.

2 Q. And do you believe you have any particular
3 expertise yourself in evaluating exactly what that balance
4 should be?

5 A. Only my layman's opinion on what appears to be
6 reasonable.

7 Q. Okay. So let's now go to Page 3 of the claim
8 form. And just to make sure we're -- we're on the same
9 page, at the top, there are two boxes in the left and
10 right-hand corner. One says for internal use only. The
11 other says PEX. Are you on the same page?

12 A. Yes.

13 Q. Okay. So you filled this page out. Was there
14 anything that you did not understand or thought it was
15 difficult to fill out on this page?

16 A. You do have to reread a few things to -- to
17 understand them, but they're understandable.

18 Q. Okay. Which -- which item do you think you
19 would have to reread to understand?

20 A. Well, where it says, Please enter your notice ID
21 number, and then it says, If you received a notice by
22 mail. Someone less familiar with this sort of process
23 might be stumped at that.

24 Q. Okay. Now, you did not receive a notice by mail
25 or e-mail, did you?

1 A. No, I did not. I -- I --

2 Q. Do you know why that was?

3 A. Probably because I did not provide my e-mail
4 address to the lumberyard when I purchased the PEX
5 fittings.

6 Q. And you also didn't make a complaint to NIBCO
7 that their product failed either when you had the failure;
8 is that right?

9 A. That's correct.

10 Q. Do you have any familiar -- familiarity with how
11 the parties and the settlement administrator gathered up
12 postal and e-mail addresses to send out notice to people?

13 A. No, I would not be privy to any of that
14 information.

15 Q. Are you aware that when notice was sent out to
16 people who could be identified from NIBCO's records and
17 various sources, that the postcard notice that those class
18 members received had a notice ID number which was to
19 facilitate the submission of claims so that the -- that
20 the claimant and the claims administrator would be able to
21 use that -- that notice ID number to help streamline the
22 process? Are you aware of that?

23 A. I'm aware of that.

24 Q. How did you become aware of that?

25 A. Common sense and having seen similar postcards

1 in my lifetime.

2 Q. Okay. So do you agree or disagree with the --
3 with the decision that was made by the parties and the
4 settlement administrator and the court to have people
5 enter notice ID numbers on a claim form? Do you think
6 that was a good idea or a bad idea, or do you have no
7 opinion?

8 A. Well, clearly it's a good idea. I never stated
9 that it was bad to have a spot to put that. I only said
10 that it was a little bit cumbersome to read that and
11 understand that to a layman that has no familiarity with
12 filling out forms of this type. If it were me, it --

13 Q. Okay. And -- and -- and would you also add to
14 that answer someone who had not gotten one of those notice
15 postcards with their unique notice ID where it would make
16 more sense if that was on the postcard that probably got
17 that --

18 A. Definitely it would make more sense to someone
19 who had that postcard, but it would seem that the vast
20 majority of people who have a claim would not have gotten
21 a postcard because most of those people would have simply
22 picked up the fittings at their supply store or their
23 plumbing supply or wherever and not had any reason --
24 reason to have that transaction registered with PEX or
25 their attorneys or anyone else, for that matter.

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1 Q. But you don't know and you don't have any
2 detailed information about how many people complained to
3 NIBCO, how many people had that information from
4 suppliers. You don't -- you don't have, as you sit here
5 today, any information about that other than your
6 particular experience; is that true?

7 A. Of course, that's true.

8 Q. Do you have any basis to dispute the fact that
9 the class counsel, that NIBCO, and that the settlement
10 administrator made all reasonable efforts to identify
11 potential class members from all the information that they
12 had? Do you have any basis to dispute that?

13 A. No, I have not disputed that.

14 Q. Okay. So let's go to Page -- we're now on
15 Page 4 of the claim form. And at the top, it has Roman
16 numeral two, description of the property. Let me know
17 when you're on that page.

18 A. Okay.

19 Q. Is there anything on this page that you found
20 confusing or difficult to -- to provide an answer to?

21 A. No, that seems fairly straightforward.

22 Q. Now, on question number three on this page, it
23 asks whether an insurance claim was made. Do you see
24 that?

25 A. Yes, I do.

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1 Q. Now, unlike most class members, apparently
2 you -- you were an insurance adjuster, so you actually
3 have some expertise in this particular area, right?

4 A. I have some expertise, yes.

5 Q. Okay. Are you familiar with the concept of
6 subrogation, that if an insurance company pays for damage,
7 say, to -- suppose you had submitted an insurance claim
8 for the damage, the 2,000 and change that you paid. If
9 your insurance company actually paid that, do you
10 understand that the insurance company would have a
11 subrogation right to collect that from whoever was the
12 tortfeasor who caused that damage, if that was possible?

13 A. Yes, I'm familiar with that process.

14 Q. And so -- okay. And so the concept is that if
15 you, Mr. Palmer, as a consumer got paid from your
16 insurance company, you don't get to get paid from some
17 other source for the same damage that the insurance
18 company was out of. That money would have to go to the
19 insurance company. So as long as the tortfeasor pays out
20 of pocket, the insurance company has got at least a
21 subrogation right. You understand that concept, right?

22 A. Yes, I'm familiar with that concept.

23 Q. And so would you agree or disagree with the
24 notion that in order to make sure the settlement fund in
25 this case goes to the right people and in order to avoid

1 possible double payments, would you agree or disagree that
2 it was reasonable to ask this question number three about
3 whether -- whether the claimant had been paid by -- by
4 their homeowners insurer or some other insurer?

5 A. It's certainly reasonable. I think it would
6 have been more clear had you simply asked first whether an
7 insurance claim had been made.

8 Q. So it sounds like you're nitpicking the precise
9 language, but not the concept of the question; is that
10 fair?

11 A. I think nitpicking implies a negative
12 connotation that's unnecessary. It's pointing out a --

13 Q. Okay. Okay. Well, why don't I ask it -- why
14 don't I ask it this way. Why don't you tell me exactly
15 what you believe you can make better in the language of
16 question number three so I can fully understand exactly
17 what you're complaining about?

18 A. Well, first of all, I did not complain about
19 question number three. If you look back at the -- the
20 record, you'll see you were the one who picked that out
21 and specifically began to ask me about question number
22 three. When you asked me what I thought of this page, I
23 said it seemed fairly clear and fairly straightforward.
24 However --

25 Q. Okay.

1 A. -- with your nitpicking about this particular
2 question, I simply made the comment that that question
3 would be more clear if you asked first was an insurance
4 claim made and then asked for the name of the insurance
5 company and claim number.

6 Q. So basically you're saying that you think that
7 question number three would have been better if you broke
8 it up into two subparts, subpart one, was an insurance
9 claim made, and then subpart two, if so, give us the claim
10 number and insurance company. Is that what you're saying?

11 A. I -- I think that probably would have been
12 better and would have eliminated the necessity to ask me
13 on the next page for the name of my homeowner's insurance
14 and the policy number if no claim was made.

15 Q. Okay. Let's go to the next page. We're on
16 Page 5. Is there anything that was difficult to
17 understand or difficult to fill out on this page?

18 A. I would say that it made me uncomfortable to
19 give you the name and policy number off of my insurance
20 when this claim had nothing to do with it. I simply
21 filled that out at the instruction of my attorney because
22 my first response to that would have been you have no need
23 for that information.

24 Q. Okay. So that's kind of similar to what --
25 okay. So -- so your view was we would have no need for

1 that information, but you do recognize that there is a
2 legitimate need to make sure that the proper balance is
3 made to avoid double payments or improper payments as
4 between claimants and their insurers and subrogation
5 rights.

6 You -- you agree with the concept that we've got
7 to, as part of administering the settlement fund, make
8 sure that we are cognizant of subrogation rights,
9 cognizant of possible double payment; is that fair? Think
10 you said that already, but I just want to make sure.

11 A. That seems like a fair thing certainly, but I --
12 I -- I'm curious as to why you would need that information
13 if no claim was made. Is it your intent for the
14 settlement administrator to go back and contact everyone's
15 insurance company to see if they made a claim on a
16 particular case?

17 Q. Okay. Now, unfortunately with this deposition
18 process --

19 A. I --

20 Q. -- I think you've been told that today that I
21 get to ask the questions and not you.

22 A. I understand.

23 Q. But I -- I -- I -- I think I'll -- I'll close
24 this topic just by -- by asking this. Is it fair to say
25 that notwithstanding your work at State Farm, in order --

1 is it fair to say that you're not the right person who
2 would have the expertise to know exactly how subrogation
3 by insurers works in cases like this and that there are
4 people who've got more expertise than a layperson, the
5 person who did some claims adjustment work, or how
6 subrogation evaluations work as part of complex claims
7 processes?

8 So I'm just trying to get the point that you're
9 not the right expert who would be able to figure out how
10 that works and what needs to be done and what information
11 is necessary for that; is that fair?

12 A. I -- I'm not sure that's a fair question because
13 you asked me to set aside my experience and say that --
14 that I'm not qualified to make that -- that decision or --
15 or draw any conclusion from it. And it's very difficult
16 to do that because you're asking me to set aside and then
17 asking me specifically if I'm qualified. Well, I don't
18 know how you do that.

19 Q. You made -- you made your fair point. So why
20 don't we break down the question. If there's different
21 answers, let me know. Tell me based on all your
22 experience whether you think what I said was fair, and
23 tell me whether you think some common ordinary person who
24 doesn't have insurance or subrogation experience might
25 have a different view, but let's talk about -- and we'll

1 talk about -- about Jeffrey Palmer with all the experience
2 you've gained over the years, including your experience as
3 a claim adjuster.

4 Do you think you're the right expert who would
5 know exactly what information is reasonably relevant in
6 order to evaluate and protect against subrogation issues
7 as part of a complex claims process like this settlement?

8 A. I'm not sure that I would define myself as an
9 expert, but it seem -- seems fairly simple that if a
10 question were asked did you have a -- were your losses
11 covered by an insurance claim and the answer to that
12 question is no, that it would be fairly unnecessary for
13 you to have the information on that person's insurance
14 company and policy. I think that any reasonable person
15 would see that and make that assessment.

16 Q. Do you know whether in class action cases like
17 this there are lawyers who specialize representing
18 insurers to pursue insurers' subrogation rights to get
19 pieces of settlements of class actions like this one? Do
20 you know that?

21 A. I'm not intimately familiar with any of those
22 proceedings, no.

23 Q. So that -- that's -- that's something where you
24 don't really have a lot of information about; is that
25 fair?

1 A. I don't have a lot of information about how they
2 go about pursuing that, but I'm not certain how your
3 question would assist them in that.

4 Q. And you -- you also don't have any expertise in
5 actually administering class action settlements like this
6 one personally, right?

7 A. No, I do not.

8 Q. And are you aware that Chris Bandas and his firm
9 to my know -- don't worry about my knowledge, but do you
10 know of any case where Chris Bandas or his firm actually
11 prosecuted a class action, got a settlement, and had
12 responsibility for administering it?

13 A. I haven't gone through their court files or
14 their cases, so, no, I would not be aware of whether they
15 had or not.

16 Q. Well, you -- you made a decision to hire the
17 Bandas firm. Did you -- did you hire them based for -- as
18 opposed to anyone else in the world, did you hire them for
19 any other reason other than your brother, Darrell Palmer,
20 suggested that you talk with them?

21 A. That would be why I contacted them. That would
22 not be why I hired them.

23 Q. So why -- and -- and I'm not talking about
24 because you wanted to do an objection, but in terms of
25 assessing the qualifications, the ethics, the -- the

1 ability to do the work, why did you hire the Bandas firm
2 as opposed to any other firm in the world?

3 A. When I spoke to them -- when I spoke to
4 Mr. Clore on the telephone, he seemed to be very
5 reasonable. He seemed to be very familiar with the case,
6 and from what I could tell, seemed to be extremely
7 competent. So it would be unreasonable for me to go out
8 and waste my time interviewing ten other attorneys and
9 decide which one I would ask to pursue this for me. So,
10 yes, I went with Mr. Clore based on my conversation with
11 him.

12 Q. Based on all the information that you know from
13 any source, do you know whether there's even a single case
14 where Mr. Bandas or his firm has actually prosecuted a
15 class action, generated a settlement, and had the
16 responsibility for overseeing the administration and
17 claims process of the settlement?

18 A. No, I'm not aware of -- of whether they do or do
19 not have that -- that sort of case that they have
20 prosecuted.

21 Q. Do you know whether or not the parties in this
22 case, NIBCO and the Plaintiffs, have hired a settlement
23 administrator, an independent settlement administrator?
24 Do you know whether that happened in this case?

25 A. I recall some reference to a settlement

1 administrator being hired.

2 Q. Do you know whether or not the court had to
3 approve the choice of the settlement administrator?

4 A. I could only assume so. I don't have specific
5 knowledge of that.

6 Q. Do you know whether the settlement administrator
7 has a great deal of experience and track record of
8 administering settlement class action?

9 A. No. All I know is that they were hired as a
10 settlement administrator. They may have been homeless the
11 day before, for all I know.

12 Q. Is that your expectation, that -- that that
13 settlement administrator was -- you said homeless the day
14 before, which I'll -- I'll assume is -- is just folksy
15 speak for they may not really have a long track record,
16 but do you have any basis to dispute that the settlement
17 administrator that was hired is a highly qualified
18 settlement administrator firm that has a long track record
19 of administering large and complex case action
20 settlements?

21 A. I have no basis for understanding whether they
22 do or do not have a long track record of administering
23 such cases.

24 Q. Do you think it would be a good idea for class
25 action lawyers, like the class action lawyers representing

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1 Plaintiffs here, who have a great deal of expertise in
2 prosecuting class action lawsuits, do you think it's a
3 good idea for them and the Defendants to hire an
4 independent settlement administration practice who
5 actually has a different expertise, which is expertise
6 in -- in figuring out how to do the claims administration
7 process and administering it?

8 Does that seem like a -- a reasonable thing to
9 do to hire an expert for a specific task which may not be
10 the bailiwick or strength of -- of a class action lawyer
11 or -- or a Defendant?

12 A. Let's just agree that we will assume that they
13 hired someone they thought was reasonable and qualified to
14 do the job.

15 Q. Okay. And would you agree with me that
16 notwithstanding your experience as a claims adjuster for
17 State Farm, that a settlement administration firm in
18 consultation with the class lawyers and the -- the
19 Defendants lawyers would be in better -- be in a better
20 position, based on their experience, to evaluate whether
21 or not the question that was asked regarding the
22 homeowner's insurance in Section E of Page 5 of the claim
23 form, that they would be in a better position to make that
24 evaluation than you would?

25 A. I -- if I felt that were the case, I would not

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1 have made that part of my objection. Clearly I feel --

2 Q. Okay.

3 A. -- that was a mistake or else I would not have
4 objected to it. So, no, I do not feel that they are more
5 qualified. And if they are more qualified, I feel they
6 made an error.

7 Q. Okay. And why don't you assume for me that the
8 Bandas firm had never prosecuted a class action that
9 resulted in a settlement and claims administration process
10 and, therefore, never did any work actually overseeing,
11 monitoring, or processing claims administration process.

12 Do you think that the Bandas firm is in a better
13 position to evaluate what would be the best practices for
14 a claims administration process than either the settlement
15 administrator in this case or lawyers who actually have
16 generated millions and billions of dollars of class action
17 recoveries and, therefore, are overseeing the processing
18 and payments out of those millions and billions of dollars
19 collected?

20 A. I can't answer a question that asks me to simply
21 assume something that I don't know. It would be as fair
22 to assume that a passerby on the street is doing something
23 and say that they -- they have no qualification.
24 You're -- you're asking me to believe your assessment of
25 their qualifications and make a judgment based on that.

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1 I made an -- an assessment based on my
2 understanding of their qualifications, not on yours. To
3 ask me to do something otherwise is -- simply has no
4 relation to any of the proceedings at hand.

5 Q. Okay. Let's talk about your assessment of the
6 Bandas firm's qualifications. The first thing we know is
7 that you do not know of the Bandas firm until your
8 brother, Darrell, said you might want to call them, right?

9 A. That's correct.

10 Q. Are you aware that your brother, Darrell Palmer,
11 has done business in the past with the Bandas firm?

12 A. I have no direct knowledge of any business
13 dealings they may have had in the past. I only knew that
14 he was an acquaintance of Mr. Clore's.

15 Q. Well, did you have an understanding based on
16 wherever you got the information from that your brother,
17 Darrell Palmer, had done a lot of business objecting to
18 class action settlements with the Bandas firm?

19 A. I had no knowledge that he had done any work
20 with the Bandas firm. I know vaguely that his work in the
21 past had to do with class actions, but as far as directly
22 who he's worked with, I have no understanding of who he
23 has or has not worked with in the past.

24 Q. Okay. Now, we -- we talked a little bit about
25 some of your understandings about the -- the suspension of

1 your brother's law license. Are you aware that your
2 brother, Darrell Palmer, has been criticized by many
3 courts across the country for his work in class action
4 objections?

5 A. No, I'm not aware of that.

6 Q. Do you know whether any federal courts have
7 criticized Mr. Bandas' practices in connection with class
8 action objections?

9 A. No, I don't have the time to research such
10 things.

11 Q. Did anyone tell you about the criticisms that
12 many federal judges and state court judges have lodged
13 against the Bandas firm for its practices in class
14 actions?

15 A. I was informed that there was a website that
16 held a great deal of criticism about the Bandas firm.
17 There are probably websites that hold a great deal of
18 criticism about your firm and many other firms. I didn't
19 feel it was necessary to follow all of those rabbit
20 trails.

21 Q. Okay. I -- I think you might be mistaken about
22 my firm's reputation, but we don't -- don't need to get
23 into that.

24 A. No. No, I -- I was not --

25 Q. And -- and -- understood, understood. And in --

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1 in terms of websites, I was asking about websites. I know
2 people post things on Twitter and Instagram and Facebook,
3 and lots of people have lots of opinions.

4 But my -- my question was focused on -- on
5 judges in federal and state courts across the country.
6 I'm just trying to get a sense whether anyone has provided
7 you information about the very sharp criticisms that have
8 been made about the Bandas firm's practices in connection
9 with objections in class actions settlements.

10 A. I was aware that some criticisms had been made.
11 I was not aware of the actual substance of those.

12 Q. Are you aware that a judgment was entered
13 against Mr. Bandas in Illinois related to his class action
14 practices that resulted in limitation of Mr. Bandas'
15 ability to practice in Illinois?

16 A. Yes, I -- I was made aware that a judgment had
17 been made against him ordering him not to practice in a
18 state where he had -- was not licensed already and had not
19 actually practiced.

20 Q. Are you aware that Judge Caproni in the Garber
21 versus Major League Baseball case excoriated Mr. Bandas
22 for his practices in connection with class action
23 settlements?

24 A. No, I was not.

25 Q. When you hired the Bandas firm, did you take any

1 steps to evaluate whether they met the minimum ethical
2 standards based on their reputation that you would hold
3 any lawyer representing you to have?

4 A. I'm not sure exactly what you're asking me.

5 Q. Okay. When you hire anyone, whether it's a --
6 if you hire a contractor, you hire an accountant, you hire
7 a lawyer, do you have an expectation that those
8 professionals will meet certain minimum ethical standards?

9 A. Of course, I do.

10 Q. And when you decided to hire the Bandas firm,
11 did you do anything other than what you've testified to
12 already today to evaluate and determine whether or not the
13 Bandas firm's practices in connection with class action
14 objections met the minimum ethical standards that you
15 would expect any lawyer representing you to meet?

16 A. Other than my conversations with members of the
17 Bandas firm, no, I did not go out and research
18 extensively. And I would have to add to that, based on my
19 dealings in the past and my understanding of attorneys, if
20 you go research attorneys looking to find ethical
21 breaches, you are going to find people who have -- will
22 say things about any attorney that you research. There
23 are always people who are mad at attorneys. It is why
24 there are so many attorney jokes.

25 Q. Right, I -- I get attorney jokes, but I think we

1 talked about before instead of -- I assume that you
2 don't -- you don't make important decisions based on
3 random postings on Facebook, Instagram, Twitter or the
4 like; is that fair?

5 A. That's fair. I've never even looked at
6 Instagram or Twitter, and Facebook is an entertainment
7 outlet for me, not an information outlet.

8 Q. I -- I -- I've got to give a thumbs up for that
9 one, sir, but in terms of attorneys, you would agree,
10 though, that when it's judges, multiple judges, who are
11 all saying the same thing, that's something that -- that
12 is worthy of taking note of; is that fair?

13 A. Given the proper context, yes.

14 Q. Okay. Let's go to Page 6 of the claim form. Is
15 there anything on this page that was either difficult to
16 understand or you thought was in any way inappropriate or
17 hard to fill out?

18 A. Question B is a little bit unclear. It asks,
19 How have you determined that your structure contains
20 tubing, fittings, or clamps. It doesn't specifically ask
21 if they're tubing, fittings, or clamps related to this
22 case. One would have to assume that, but some people may
23 not make that assumption.

24 Q. Okay. Let -- let's talk about that before we
25 move on. You see up on the top of the page, letter A,

1 description of NIBCO PEX tubing, fittings, and/or clamps?

2 A. Yes.

3 Q. Yes. And then on B, is -- is it under B where
4 it says, How have you determined that your structure
5 contains tubing, fittings --

6 A. Right.

7 Q. -- or clamps? Are -- is your criticism that the
8 use of the word "NIBCO" on section A right above that in
9 bold should have been reproduced in the unbolded text
10 before tubing, fittings, and clamps under B? Is that what
11 the criticism is?

12 A. It would clarify things. I -- I think sometimes
13 attorneys make a great deal of assumptions about the
14 abilities of the common person to understand a form and
15 follow it correctly.

16 Q. Were you confused about that when you personally
17 filled out this claim form?

18 A. I did have to read it twice to -- to see what
19 you were saying or what the form was asking for, two or
20 three times actually.

21 Q. And -- and so can you give me an estimate in
22 terms of how many seconds it took for you to determine
23 that under B, tubing, fittings, and clamps referred to
24 NIBCO tubing, fittings, and clamps? How many extra
25 seconds did it take you to figure that one out?

1 A. I'm really not certain.

2 Q. Are you prepared to testify under oath that it
3 took you more than ten seconds?

4 A. Most likely.

5 Q. Do you believe it took you more than 30 seconds?

6 A. I couldn't say. I probably went back and looked
7 at some other documents to check, and it may or may not
8 have.

9 Q. So you said you -- you -- you may have looked at
10 other documents to figure it out. Were you not able to
11 figure out from -- from the bolded section A right up top
12 that says NIBCO PEX tubing, fittings, and clamps that
13 under section B, it was looking for information about
14 NIBCO tubing, fittings, and clamps as opposed to tubing,
15 fittings, and clamps from some other company?

16 A. No, that's definitely what I was saying.

17 Q. Okay. Did you -- other than looking at the
18 bolded description of section A where it referred to
19 NIBCO, did you really actually go to look at any other
20 document in order to figure out whether the -- the
21 checklist was limited to NIBCO tubing, fittings, and
22 clamps?

23 A. No, I did not.

24 Q. Did you find it helpful to have a checklist as
25 opposed to just having a general question with no

1 checklist saying how to determine whether you have a NIBCO
2 tubing, fitting, and clamp? Do you think it was a good
3 idea to have a checklist to help guide people, what kinds
4 of things they might want to look for?

5 A. I would say the checklist is a good idea, but
6 when I said that I had --

7 Q. Okay.

8 A. -- to consult other documents, it was to see
9 where the documents I had fit into your checklist to make
10 sure I understand where to check.

11 Q. Okay. So under leaked fitting, that's one of
12 the boxes you checked. What other documents did you need
13 to look for, documents that related to leaked fitting?

14 A. Well, it lists bills of sale or purchase order.
15 Knowing how attorneys like to get things perfectly
16 defined, I wanted to look at the document, the receipt
17 that I had to see whether it stated it was a bill of sale,
18 an invoice, a purchase order or what, so.

19 Again, terminology in the South may differ
20 somewhat from what's typical in your part of the country,
21 so it's less common to use the term "bill of sale," but
22 that -- that is, I will give you, a nitpicky criticism.

23 Q. Okay. Same question about the other one you
24 checked below, Used in the property, did you have to look
25 at any other documents to understand that?

1 A. Are you reading your -- your form correctly?

2 Used in the property is the last phrase of a larger
3 sentence.

4 Q. Oh, no, yes, correct. Yes. The -- the
5 sentence, Builder, plumber, or contractor letter stating
6 upon personal knowledge that tubing, fittings, and/or
7 clamps were used in the property, did you need to look at
8 any other documents to understand what was being sought
9 there?

10 A. No.

11 Q. Okay. Is there anything else on this page
12 Number 6 that you have any criticisms of or had trouble
13 filling out?

14 A. Well, looking at the next question, I realize
15 that I did not explain why I did not enclose the leaked
16 fitting. It's fairly obvious. When it had been several
17 years, I may retain documents and papers for that long,
18 but I don't keep broken parts that long. I don't think
19 the average person would either, so.

20 Q. And is that question number eight?

21 A. No, it's not even --

22 Q. Which question are you referring to?

23 A. The bottom of the list that you were just asking
24 me about, it says, Enclosures required.

25 Q. Oh, okay. So you forgot to just write in

1 "didn't keep it" in that section?

2 A. That's correct.

3 Q. But if you had focused on that, it would have
4 been easy to write in, Didn't keep it, it was X years ago,
5 fair?

6 A. That's fair. It would be easy to -- to say that
7 about every single question on this form if you focused on
8 it specifically, which would take quite a deal of time,
9 which is one of my objections about this settlement.

10 Q. Do you believe that your claim will be penalized
11 in any way because you did not keep a few fittings that
12 failed several years ago that probably collectively cost
13 you about less than ten or \$15? Is it your expectation
14 that -- that processing your claim will be penalized in
15 any way because you did not keep the fitting?

16 A. I have no idea whether it will be. I know that
17 if it does go to the engineering firm that's been hired to
18 assess the claims and they have nothing to evaluate, they
19 will likely say insufficient information. And there's
20 a -- a good chance that they could determine that -- that
21 the claim was not valid because they didn't have enough
22 information to evaluate it. And that's another issue that
23 I have with the entire claims process.

24 Q. You don't know that it would shake out that way.
25 This is just you speculating how it might shake out; is

1 that fair?

2 A. I'm speculating that that is a definite
3 possibility, and that possibility is unacceptable, the
4 fact that it could be thrown out simply because I didn't
5 send that in and because some engineer says, Well, I don't
6 know that this is real, you know, it doesn't look right to
7 me, yeah, don't pay this one, and that there isn't really
8 much of an appeals process for that situation.

9 Q. What do you understand about the appeals process
10 for any negative determinations by either the
11 administrator or the independent evaluator?

12 A. Well, I would have to go through the settlement
13 again to understand exactly what your claims process was
14 on that, or appeals process was.

15 Q. And what do you understand class counsels' role
16 to be in terms of helping class members whose claims are
17 denied at any stage of the process?

18 A. I'm not sure what their -- their role would be
19 in that process.

20 Q. Do you have any idea whether -- let's take my
21 firm, my cases. Do you have any idea what my track record
22 is in terms of protecting class members against improper
23 denials of claims by either settlement administrators or
24 defendants?

25 A. I have no idea what your track record is. I

1 have not researched your firm, even as much as I have
2 researched Mr. Bandas' firm.

3 Q. But you would hope, and tell me if I'm wrong,
4 you would hope that the firms who have brought this
5 settlement to the court and that the court would do their
6 job in making sure that valid claims get paid without the
7 claims administrator or the other evaluators being, I'll
8 use your word, excessively nitpicky. That's your
9 expectation that we'll do our job, fair?

10 A. Or that would be my expectation, but let's be
11 clear, nitpicky was first your term. Okay.

12 Q. Okay. Fair enough. As long as you're not
13 disagreeing with how both of us have used that word.

14 A. No.

15 Q. And -- and based on your work at State Farm, is
16 it -- is it fair -- is it fair to say that a consumer
17 having an advocate, no matter how a program is structured,
18 there's always a benefit for a consumer having an advocate
19 to make sure that if they're being treated unfairly, that
20 someone is there to try to protect them? Is that fair to
21 say from your experience with State Farm?

22 A. That would be fair to say just in general.

23 Q. Okay. On Page 7, any -- any complaints or
24 problems filling out this page?

25 A. The reference to the effective date is very

1 confusing and unclear because it's not even something
2 that's been defined because it's a date somewhere in the
3 future. And the average person -- although I may be able
4 to go look that up and have a better understanding after
5 reading documents, the average person is going to look at
6 that and have no idea what that means.

7 Q. Now, you would agree that it's necessary to have
8 a claims form, given the structure of the settlement, that
9 allows people to make claims in the future if there are
10 failures, right? You don't want to cheat out those
11 people, correct?

12 A. That's correct.

13 Q. So there has to be provisions to deal with not
14 just claims that are what I'll call claims looking
15 backwards at the time this notice and approval process is
16 going but also that account for on claims going forward,
17 fair?

18 A. That would seem to be fair, but I'm not sure
19 what relation that has to the -- the question at large
20 here.

21 Q. Okay. But it -- it sounds like your -- your --
22 your quibble with the use of the word "effective date" is
23 that you would pre -- (videoconference pauses) more easily
24 to understand language for claims that will be submitted
25 in the future after this case or the settlement is

1 approved. You would want some more descriptive language?
2 Is that what you want? Is that what your complaint is on
3 this one?

4 A. I'm sorry. I think we lost about half of your
5 question there with the video feed.

6 Q. Oh, okay. Let me -- let me -- let me restate
7 it. Because I have no idea what it will look like on the
8 court reporter's transcript either. Is -- is -- is your
9 objection to the use of the word "effective date" that you
10 would have preferred that there be some language more akin
11 to for claims or failures that happened after the
12 settlement is approved by the court, something --
13 something like that, just changing the words a little bit?

14 A. That would certainly make it much more
15 comprehensible. As it is, it is -- it is confusing and
16 unclear. The term is used several times through the
17 document, and even when you go through the other documents
18 related to it, it's never defined.

19 Q. Is this something that bothered you when you
20 read the claim form yourself before you consulted the
21 Bandas firm?

22 A. It's something that bothered me as I was trying
23 to fill out the form, and I questioned Mr. Clore about it
24 and what that meant, and he --

25 Q. Did Mr. Clore have any problem -- I'm sorry. Go

1 ahead.

2 A. Oh, I was going to say he -- he was equally
3 confused about what it was. He did some research and
4 tried to figure out what that meant.

5 Q. So is it -- I just want to make sure I heard you
6 right here. Is it your testimony that Mr. Bandas'
7 associate, Robert Clore, was confused about what the
8 capitalized defined term effective date meant in his
9 conversation with you, and that in order for him to figure
10 that out, he had to go look at other stuff? Is that what
11 he told you?

12 A. It is fair to say that when he read the term
13 "effective date," he did not know at what point in time
14 that date was and wasn't able to answer me when I asked
15 him what that date was. And he went and researched the
16 term to see where in court documents it might refer to
17 exactly what the effective date was.

18 Q. Was he able to tell you generally that the
19 effective date meant the date when the settlement had been
20 approved and all appeals had been exhausted so it was a
21 final judgment? Did he know enough to tell you that, or
22 did he have to go research that?

23 A. Yes, he would have known that, but, again, I had
24 an attorn -- attorney to speak to while I was filling the
25 form out. The average consumer is not going to have an

1 attorney present while they're filling this form out.

2 Q. Okay. Anything else on Page 7?

3 A. Are you asking me to -- never mind. If you're
4 asking me to rewrite the form, so that it's more legible
5 and less cumbersome, there would be all sorts of things,
6 but if you're asking me for a specific item that I would
7 say, I don't like this one thing, I can't point to a
8 particular item that I would say, This is terrible.

9 Q. Okay. And is there anything else on this page
10 that either you didn't understand or was very difficult or
11 time consuming for you to fill out?

12 A. The only thing I would tell you made it
13 difficult on this page is while I was trying to fill it
14 out using an Adobe reader software, I filled out the form
15 not realizing that a tubing leak is separate from a
16 fitting leak, which on the next page, is different from a
17 clamp leak, because I did not go through and spend the
18 time to read the entire form line by line carefully before
19 I started filling it out.

20 So I had to do a lot of editing on it because I
21 put my information in under tubing leak and then realized,
22 Oh, wait, that is different than a fitting leak, so it --
23 it took me some time to fix that before I was able to
24 complete the form and -- and submit it for the claim.

25 Q. Okay. And so looking at Page 6, you'll see

1 under Roman numeral four, it says, Description of loss,
2 and then bolded heading A is tubing leak. Do you see
3 that?

4 A. Yes. And I -- as I stated, I did not go through
5 and read all of those, and the average person would say
6 tubing leak, okay, yeah, I used PEX tubing, and it was
7 leaking so started to fill it out. Again, had I been an
8 attorney who was used to reading documents carefully and
9 filling out every nitpicky item, I would have gone through
10 it first and not had that confusion, but since your
11 average consumer that's filling this form out is not an
12 attorney -- attorney, I expect that's going to be a -- a
13 common confusion for people.

14 Q. Oh, okay. And you -- you started answering
15 before I asked my question.

16 A. I'm sorry.

17 Q. So let me -- let me -- no, that -- that's --
18 that's okay because we're here to get information from
19 you, and that was informative. But let me -- let me just
20 ask my question full, so I can get a response.

21 I just want to make sure that -- is it your
22 testimony that when you read on Page 6, under Roman
23 numeral four, the bolded heading description of loss, and
24 A, tubing leak and then the next Page 7 and the bolded
25 heading is fitting leak, you just missed that they were

1 being parsed out separately. Is that -- that's your
2 testimony which drives your complaint?

3 A. That drives part of my complaint, yes, that --
4 that would be my testimony. I just missed it because it
5 is somewhat confusing.

6 Q. Did you ever have an occasion while you were at
7 State Farm where State Farm would have a form for people
8 to submit claims, and then it would change the form to
9 hopefully make it better, and then it would change the
10 form again to hopefully make it better? Did you ever --
11 ever notice any evolution of forms at State Farm?

12 A. Most of the forms I dealt with were for the
13 adjuster, not for the claimant.

14 Q. Did you ever have any criticisms, nitpicky or
15 otherwise, for the form -- forms that corporate sent to
16 you as the adjuster where you said to yourself, God, this
17 could be better, and then you saw a next iteration where,
18 yeah, this is better, but it still could be better? Did
19 you have any of that experience with State Farm?

20 A. I think that's common with anyone who commonly
21 fills out forms for the same company. If it's -- if it's
22 my understanding that your intent is to revise this form
23 and make it more friendly to claimants, then I would
24 applaud that.

25 Q. Yeah, my -- my intent is just to find out

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1 whether -- whether you had the same criticisms that you're
2 talking about here with this form, whether you ever had
3 the same thoughts or criticisms about the various forms
4 you had to deal with at State Farm?

5 A. I don't recall the exact forms, but I'm sure
6 there's probably things that could have been written
7 better there as well.

8 Q. Did you -- do you ever recall thinking that
9 there was anything nefarious or wrong about the forms that
10 you as an adjuster were provided at State Farm that you
11 thought could maybe be written better?

12 A. I'm not exactly certain what you mean by
13 nefarious, but I would certainly say some of them could
14 have been written better.

15 Q. Were you still able to fill them out at State
16 Farm?

17 THE WITNESS: Did you understand what he said?

18 THE REPORTER: Yeah, could you repeat the
19 question, please?

20 Q. (BY MR. SCHWARTZ) Sure. Were you still able to
21 fill out those forms at State Farm even if you thought
22 they could be written better?

23 A. Yes. And if the forms were written poorly, I
24 would consult a supervisor, just like in this case I
25 consulted an attorney.

1 Q. Okay. Let's go to Page 8. Was there anything
2 difficult or -- difficult to understand or fill out on
3 this page?

4 A. No, I would say that seems fairly
5 straightforward.

6 Q. How about Page 9, anything difficult to fill out
7 or understand on Page 9?

8 A. The only thing I would note on this page is that
9 here it does give another opportunity to explain why you
10 are not providing the fittings that it asked you again
11 earlier in the form to provide and explain. So you are
12 explaining it twice, but that's something we could
13 definitely qualify as nitpicky.

14 Q. And -- and -- and so I did want to talk about
15 that. You apparently -- and I'm not -- you weren't doing
16 anything nefarious or wrong when you just missed putting
17 in why you didn't have the fittings back, I guess it was
18 earlier in the document, but you did fill out here on
19 Page 9 that you disposed of the fittings.

20 So I just want to make sure when you put it in
21 one place but not the other, you weren't doing anything
22 wrong or trying to confuse anyone or -- or mislead anyone.
23 You just didn't put it in one place, but you caught it on
24 the next place; is that fair?

25 A. That would be fair to say that I just missed

1 that one just like -- never mind.

2 Q. Okay. And so I guess if someone wanted to be
3 nitpicky, they could say, Well, they ask the same thing
4 twice, so it's duplicative. If you wanted to be -- look
5 at it a different way, you could say, Well, the benefit of
6 maybe asking that question twice is you will pick it up
7 somewhere if it's not somewhere else.

8 Given -- given those two possibilities and any
9 other possibilities you want to consider, good idea or bad
10 idea to have -- have that question asked twice so you can
11 get that answer for the form, or do you have no opinion,
12 but what is your opinion about that?

13 A. I would say I have no strong opinion. I -- I --
14 I'm not certain that was the intent when the form was
15 designed to make sure you duplicated it for the benefit of
16 the claimant, but if that's your assertion, I certainly
17 wouldn't argue with that.

18 Q. Well, then let's -- let's ask it this way. Do
19 you believe it is helpful for the processing of your
20 claim, and when I say helpful, I mean, helpful towards
21 getting it approved, that at least somewhere in this form
22 if you don't have the clamps anymore, there's a statement
23 that you have saying, Oh, I don't have them anymore
24 because they were disposed of? Is that helpful to get
25 paid on this claim or not helpful, in your view?

1 A. Not -- not being the claim administrator, I'm
2 not sure if it's helpful or not, but at least it got the
3 question answered.

4 Q. Okay. Same sets of questions on Page 10, any --
5 any difficulties understanding or filling out Page 10?

6 A. I obviously had no difficulties because nothing
7 on that page applied to me.

8 Q. Any difficulties understanding or filling out
9 Page 11?

10 A. No, that's a fairly straightforward page.

11 Q. Okay. And let's look at Page 12. This is more
12 informational and a reminder. Any -- any difficulties
13 understanding or any criticisms about Page 12?

14 A. No, that appears straightforward and
15 informational.

16 Q. Do you see at number seven on Page 12, it says,
17 If you have any questions, you can contact the settlement
18 administrator at either their phone number which is toll
19 free or by e-mail? Do you see that?

20 A. Yes, I do.

21 Q. And I'm not sure if you recall, but that same
22 information was provided on Page 1 of the claim form. If
23 you had questions, you could reach out to the settlement
24 administrator by phone toll free or by e-mail or by
25 regular mail, too. You could write to the address? Do

1 you see that --

2 A. Yes.

3 Q. -- on Page 1?

4 A. Well, yes, that's there.

5 Q. Well, and the assumption that you don't think
6 that -- pigeon carrier or some other mode of communication
7 should have been available, to the extent that you were
8 confused about any of the terms like the effective date,
9 did you ever consider just picking up the phone or
10 shooting a quick e-mail to the claims administrator
11 saying, Hey, what does this mean?

12 A. To be completely honest, since I was already in
13 communication with Mr. Clore, it was easier for me to talk
14 to him than to consult your claims administrator, so
15 that's not something that I would have entered my mind to
16 do.

17 Q. For someone who did not lawyer up or get a
18 lawyer for the purpose of dealing with this settlement or
19 about this claim, that was an option that's available to
20 them. Is that something that you think is reasonable,
21 that -- that if they have questions, they can call someone
22 who's a professional who can answer those questions in --
23 in three different ways, which are the easiest ways of
24 communication?

25 A. It seems reasonable if you have a question to do

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1 that, but having a -- a way to answer a question doesn't
2 always justify creating a question.

3 (Interruption in proceedings)

4 A. Sorry about that.

5 Q. (BY MR. SCHWARTZ) Okay. I know we've been
6 going about two hours or so. I can continue going on, but
7 I just want to make sure you know that if you need a
8 break, just let me know, to go to the bathroom or just to
9 stretch your legs.

10 A. That -- that would be great, sure, if we could
11 take a break about now.

12 Q. Okay. About how much time do you think we need
13 just so people who are on video -- five minutes okay or --

14 A. Yeah, five minutes is fine.

15 Q. Okay. Great. Okay. Well, thank you so much.
16 I appreciate how it's gone so far. I think the -- the
17 technology is working. So let's take a break, and then
18 we'll -- I'll try to finish up and get you out of here.

19 A. All right. Thank you very much.

20 (Recess from 11:20 a.m. to 11:34 a.m.)

21 MR. SCHWARTZ: Back -- back on the record.

22 Q. (BY MR. SCHWARTZ) Mr. Palmer, after Page 12 of
23 the claim form, the next page is a statement that you --
24 you wrote. Is that something that -- that's something
25 that you added into your claim form as an attachment,

1 correct?

2 A. Give me just a moment to find that. Yes, that's
3 correct.

4 Q. And -- and just in terms of the process of
5 submitting this claim form, did you e-mail it to the
6 claims administrator? How do you actually get it to the
7 claims administrator?

8 A. I e-mailed it to them.

9 Q. Okay. You didn't use a website to send it in
10 through that, did you?

11 A. No, I did not.

12 Q. Okay. Did you have any problems mechanically
13 e-mailing your final claim package to the claims
14 administrator?

15 A. Not anything that would be more than normal with
16 trying to attach a document to a form.

17 Q. Okay. And why did you attach this page? And if
18 you look at the very top, you'll see there is the -- the
19 stamp that's actually generated by the court, and you'll
20 see it says Page 21 of 25. This is your written
21 statement?

22 A. That's correct.

23 Q. Do you see that?

24 A. Yes.

25 Q. Okay. And so for this Page 21 of 25, what was

1 the purpose for why you included this on your claims form
2 submitted to the settlement administrator?

3 A. Well, if you refer back to the form, in looking
4 for documentation for proof of your claim or proof that
5 the NIBCO fittings were used, it states that a letter from
6 a contractor in the business who performed the work and
7 could specifically state that those fittings were used was
8 acceptable for proof that those were the fittings or that
9 the NIBCO fittings had been used. This form is that
10 letter.

11 Q. Okay. Now, at the bottom of the letter in the
12 last paragraph, you -- you note that you -- you -- you
13 attached a -- that's on the next page, which is a -- a --
14 a receipt, and you said you're not certain if this is the
15 receipt for the fittings that leaked, but it was from that
16 time period.

17 And with that sentence in your mind, let's look
18 at what is Page 22 of 25, which is this Nocona,
19 N-o-c-o-n-a, Building Center receipt. Why don't you tell
20 me what this was, where you got it from when you were
21 putting your claim form? Why don't you start with those
22 two -- two questions, and then I'll go from there?

23 A. You mean where did I get my original copy of
24 this paper? Is that what you're asking me?

25 Q. Well, I assume -- well, I assume you got the

1 original copy when you were doing the work way back when
2 in, what was it, 2014, 2012?

3 A. 2014, January of 2014.

4 Q. Right, right. So you got that in the normal
5 course of business in 2014. When you're doing your claim
6 form, where was this document? What -- what did you have
7 to do to get this document?

8 A. It was in a box upstairs with the rest of my
9 receipts from that year.

10 Q. Okay. Now, you see in the description, the
11 description doesn't actually say NIBCO, but it does say
12 PEX. Do you see that?

13 A. Yes.

14 Q. And -- and -- and -- and tell me if I've got
15 this wrong. From -- from the statement you have on the
16 prior page, is it fair to say that -- that is the one
17 receipt you found that seems to match up with these NIBCO
18 PEX fittings that you recall getting. You noticed that it
19 didn't say NIBCO on it, but you think that it is, but this
20 is the best you can do. Is that basically a fair summary
21 of what your thought process was with respect to this --
22 this receipt?

23 A. That would be a pretty fair assessment of the --
24 of the statement. I did have multiple receipts similar to
25 this. It seemed cumbersome to attach 15 different

1 receipts from the lumberyard, all showing some PEX
2 fittings. None of them specifically state NIBCO. I doubt
3 that the proprietor at the lumberyard in Nocona would be
4 aware of the difference between a NIBCO or any other
5 fittings or probably not know exactly where he had gotten
6 those fittings as there was dust on them on the shelf when
7 I purchased them.

8 Q. Okay. But this -- this is -- this is your --
9 the best receipt that you were able to find for a purchase
10 that at least you have an independent memory of, oh, I
11 remember getting NIBCO fittings during this time period
12 because NIBCO is a weird name, right?

13 A. That's correct.

14 Q. And at least to date, you haven't heard the
15 settlement administrator or anyone else come back to you
16 and say there's something insufficient about this --
17 this -- this page in terms of proof for processing, and at
18 the end of the day approving your claim. No one has told
19 you that there's anything insufficient about this, have
20 they?

21 A. No, I haven't heard back anything from the
22 claims administrator or NIBCO except the acknowledgment
23 that they received my claim form.

24 Q. Okay. And then on the next page, this is Page
25 23 of 25, this is an invoice from Classic Construction

1 Remodeling. That was one of your companies back in 2014?

2 A. That is correct.

3 Q. And this is -- this is -- is this a document
4 that was actually prepared in 2014 that was just in the
5 normal course of your business, or did you prepare this
6 specifically for your claim?

7 A. No, that would have been normal course of my
8 business at that point to provide documents for our rental
9 property business so that we can justify monies that were
10 spent when we're doing our taxes basically.

11 Q. The normal kind of documentation that you as a
12 contractor would have to do in order to run your business
13 properly and do your taxes properly, fair?

14 A. That's correct, yes. That would be a fair
15 statement.

16 Q. Okay. And there's -- there's nothing unique
17 about -- about this invoice, that it's just serendipity
18 or -- or luck that it happened to be created at the time.
19 In order to do what you did for your normal business,
20 these are the kind of documents you would do; is that
21 fair?

22 A. That's a fair statement, and it would have
23 probably been in the same box with the other invoice
24 because we have them set by years to keep our documents
25 for tax purposes.

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1 Q. And why do you have those boxes of documents for
2 your business? Why do you still have them?

3 A. Because it's my understanding that the IRS wants
4 me to keep these things for seven to ten years, so in
5 keeping with the requirements of the IRS and the federal
6 government, I keep them around. My wife was an executive
7 secretary, so she's very good at filing things and keeping
8 them.

9 Q. And -- and since you have customers back from,
10 say, 2014, 2012, 2015, there's always a possibility that
11 one of your customers could come back and say, Hey, I'm
12 having a problem. Is one of the reasons why you keep
13 records also so you can deal with any complaints or
14 questions from customers?

15 A. That would be a fair assessment. It's also so
16 that if somebody contacts me and says, Hey, I need another
17 cabinet door made to match the existing ones, I have
18 documentation showing me the color of stain that I
19 purchased from the paint company so that I can match that
20 and -- and things of that nature.

21 Q. So that's another reason why you keep the
22 documents, just as a matter of course?

23 A. Yes.

24 Q. And I can tell you from personal experience that
25 it would -- it's a lot easier when you have that document

1 that says this door handle is this color as opposed to
2 trying to match it up with 25 possibilities, but -- but so
3 I -- I get it. And then the last page of -- the last page
4 that has any text in this document, this is just e-mail to
5 the settlement administrator providing all your
6 information, right?

7 A. Yes, that's correct.

8 Q. Okay. So besides -- we can put that claims form
9 or that document, Exhibit 2, down now, which is your
10 declaration and your claim form. Besides the objections
11 that were filed on your behalf regarding the claim form,
12 why don't you tell me what your understanding is of the
13 other objections that you've made?

14 A. Are you looking for a full list of all of those
15 objections or --

16 Q. Well, I'm going to eventually put your objection
17 in front of you, but why don't we start from your memory
18 because I want to get a sense of -- of what you -- just
19 sitting here today are the keys things that you find
20 objectionable to this settlement.

21 A. Well, some of them we've already discussed in
22 that it's objectionable that the class members would have
23 to wait up to six years for the remainder of their funds
24 when you and your law firm is get -- getting paid in full
25 all of your fees immediately. And you're saying it --

1 wouldn't it be terrible -- you were asking me earlier if
2 it would be terrible for me to have a future claim and
3 then find that the money has all been spent and -- and
4 given to other claimants and also to your firm, your firm
5 having been paid in full. I think that enters into it,
6 and that's one the things I find highly objectionable.

7 The -- there doesn't seem to be any correlation
8 between what the class members are going to get as a
9 payout and what the attorneys' fees are. Typically there
10 is at least some point of reference between those two
11 things.

12 In this case, it would be real simple for your
13 company to get -- or your firm to get whatever its full
14 attorneys' fees are, and then -- something to the tune of
15 13 million, if I recall. And it would not be outside the
16 realm of possibilities for very few claims to be filed and
17 only, you know, a million or two million to be paid out to
18 claimants. I -- I -- as far as what the likelihood of
19 that is, I have no idea, but it is definitely a
20 possibility that ought to be addressed in the process.
21 That's one more thing --

22 Q. Okay.

23 A. -- that I think is unreasonable.

24 Q. Any -- any other big things that you recall off
25 the top of your head?

1 A. Of course, you understand that the nature of
2 this process causes someone to forget things that ten
3 minutes ago they may have been freshly remembering. So
4 keeping that in mind that I'm sure there are other things
5 that I'm not thinking of right at the moment, we'll go
6 with that for the moment.

7 Q. Okay. And so let's -- let's first talk about
8 the -- the six-year period that you referred to. We
9 already talked about how -- how you agree with the notion
10 that it makes sense for people who have not yet had a
11 failure with NIBCO products but have a failure in the
12 future, say, within the next six years, that you want to
13 have a settlement that provides compensation for those
14 people.

15 You don't object to the fact that there's the
16 ability for people to file claims over the next six years;
17 is that correct?

18 A. That's -- that seems like a reasonable thought.

19 Q. And, in fact, that six-year period could
20 actually end up benefiting you if you have another home
21 that you've worked on where there is damage, you may be
22 able to get paid for that if it happens a year, two years,
23 three years down the road, right?

24 A. I suppose that's a possibility. It would be
25 more beneficial for me to collect the entire claim at --

1 at this point, just like you're collecting all of your
2 attorneys' fees once the settlement is made.

3 Q. Okay. Do you know how many years that we've
4 been working on this case up to this point in time?

5 A. I'm not asking you to justify it. I'm just
6 saying if you're -- if you're making that statement to me,
7 there's no reason that -- that -- if I'm being asked to
8 not be compensated for what I put out, how is that
9 different from you getting compensated for everything
10 you've put out? One is no more reasonable or unreasonable
11 than the other.

12 I -- I'm not asking you to justify how much
13 time, money, or effort you've spent in the claims process
14 or in the -- in the process of filing this suit. I --
15 likewise, you should -- shouldn't ask me to justify why I
16 don't need to wait six years. There's -- why is one okay
17 and the other is not? I realize that's your job is to try
18 and make it okay so that you can get your money, but that
19 doesn't make it more okay to me.

20 Q. Okay. My specific question is, do you know how
21 much -- how many years the -- the Plaintiffs' class action
22 lawyers have been working on this case?

23 A. No, I do not.

24 Q. Maybe you were told this, or maybe you saw this.
25 Would it refresh your recollection to know that the case

1 was filed in 2013 and that the class counsel has been
2 working on this case for about six years?

3 A. I'm sorry. Are you asking if I was aware of
4 that, or would it surprise me? I --

5 Q. It -- it sounds like you're not aware of it.
6 Tell me if I'm wrong, but would it surprise you that we've
7 been working on this case for at least six years?

8 A. No, it wouldn't surprise me.

9 Q. Okay. And -- and -- and just so I understand
10 your proposal, your proposal is that even if the
11 settlement is approved, we should have to wait up to
12 another six years before we get paid our attorneys' fees;
13 is that right?

14 A. I didn't make any proposal. I only made a
15 statement that one seems unfair. I -- I would be
16 perfectly okay with the thought that you get 25 percent of
17 your fees upfront, and you're only allowed to collect
18 70 percent of what you're billing for it, just like I'm
19 only allowed to collect 70 percent of my claim.

20 Q. Have you had any experience suing people in your
21 life?

22 A. Not that I recall.

23 Q. You understand that unless someone goes to trial
24 and wins at trials and wins every appeal, that all
25 settlements of cases, virtually all settlements at least,

1 are compromises where not every side gets everything they
2 want?

3 A. It seems reasonable from what I've watched on
4 TV.

5 Q. Are you generally aware that NIBCO did not
6 simply raise its hands and say, Yes, we're -- we're --
7 we're guilty here, that they actually fought us tooth and
8 nail throughout the -- the years of litigation in this
9 case? Are -- are you aware that NIBCO fought us very hard
10 in this case?

11 A. I wouldn't say that I'm aware, but I would say
12 it's a fair assumption that they probably had their own
13 legal firm that was fighting you.

14 Q. So -- so NIBCO's counsel is from the law firm of
15 Morgan, Lewis & Bockius. Are you aware that that's one of
16 the -- the largest and most profitable and -- and most
17 highly regarded law firms in the world?

18 A. No, I'm not.

19 Q. But you're not surprised by that at all?

20 A. No, I'm not surprised at all by that fact.

21 Q. Let's talk about the amount of the settlement.
22 Do you think a recovery of between 25 percent and
23 70 percent of damages in a complicated case like this,
24 does that sound like a pretty good result in the face of
25 stiff opposition from NIBCO as a settlement in this case?

1 A. I'm sorry. Could you rephrase that question?

2 Q. Sure. Let me -- let me break it down. First,
3 you understand that if we just litigated this case through
4 trial and appeals, it's possible that NIBCO would have won
5 and class members like yourself would have gotten zero,
6 right?

7 A. I understand that could be a possibility, yes.

8 Q. Do you also understand that if -- if -- if there
9 was no settlement and we litigated this case until the
10 bitter end, it could have been another six years before we
11 had a final judgment because that's how long it takes for
12 the legal process to -- to work in these kinds of large
13 cases?

14 A. I understand that.

15 Q. As a class member, are you happy that the
16 settlement was done now with some certainty that the
17 result will be between 25 and 75 percent, depending on the
18 number of claims that are approved, versus waiting another
19 possibly three, four, five, six years to see how the
20 litigation goes and take your chances? Are you -- do you
21 have any dis -- do you have any complaint about having a
22 settlement within this range that we have just in terms of
23 the recovery given the risks?

24 A. If you're asking if I'm okay with the fact that
25 there actually is a settlement and that getting 70 percent

1 is better than getting nothing, I would say that seems
2 like a fair -- a fair statement that I would be okay with
3 that thought.

4 Q. And -- and -- and you also know any raises
5 that -- that the -- that the immediate payment for -- for
6 a claim such as yours is 25 percent of the damages. Do
7 you -- is -- is it your view that if class members got
8 25 percent and not a penny more because there are so many
9 claims that were -- were approved that people only got
10 25 percent, are you raising an objection that that means
11 the sentiment fund wasn't big enough and that recovery
12 isn't good enough given all the risks and all the -- all
13 the potential for delay?

14 I just want to get a sense of whether you have
15 an objection to if it turned out the number was 25 percent
16 that people got, given the number of claims that are
17 assessed against the \$43 million fund, because I don't
18 know whether you think even 35 or 45 or 50 is a better
19 number, but do you have a -- do you have an objection to
20 the -- to the minimum 25 percent number?

21 A. It seems like you're asking me if I would be
22 okay if I was only getting 25 percent and then nothing
23 more, and in that case, I would probably say, no, I
24 wouldn't be okay with that idea, but I would have to see a
25 fair assessment or at least an estimation of how many

1 claims are expected and what the dollar amounts are
2 expected to be of all the claims. And I haven't seen any
3 information that gives me a good assessment of that, so it
4 would be --

5 Q. Well, let's make sure you understand -- I'm --
6 I'm sorry. Let's make sure you understand how this works.
7 Is it your understanding that as claims are received and
8 approved, the settlement is approved, that there will be
9 an immediate payment of 25 percent of the claim, and then
10 once we're at the end of the six-year period so we now
11 have all claims, that the settlement administrator will --
12 will, after everyone got their initial 25 percent will
13 take the -- the amount of money that's left and then
14 distribute it to every approved claimant pro rata, meaning
15 in proportion to what their approved claim was, so that
16 they can get an increase from 25 percent to as much money
17 there is within the fund up to 70 percent? Is that your
18 understanding as to how this is going to work?

19 A. That would be my layman's understanding of the
20 way it appears to work, not having poured through the
21 documentation, you know, extensively, yes.

22 Q. Okay. And -- and maybe I should ask the
23 question this way. In a complex case like this where
24 there is a vigorous defense, you've already told me what
25 you thought about a 70 percent recovery. Is there

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1 anything objectionable on its face to you of a 25 percent
2 recovery being so low that that would be something you
3 would come in and say that it's got to be objectionable?
4 I just want to get a sense of whether there's something
5 about the minimum 25 percent number that's objectionable
6 in and of itself, whether you're just complaining about
7 how we're going to pay claims over time itself?

8 A. Well, I would definitely object to a 25 percent
9 settlement on it because in cases like mine, it really
10 wouldn't be worth my time to even file a -- a claim on it.
11 And in that case, nobody else would probably file a claim,
12 and the funds available would be a lot more than
13 25 percent of the claim. It -- it's kind of the same
14 round robin that you're chasing with the attorney fees.
15 It doesn't have a whole lot of reference to reality, I
16 don't think.

17 Q. So you -- your -- your -- the damage that you
18 have listed is about \$2,300, so, so 25 percent of 2,300 is
19 somewhere between five and \$600, I believe, right? Are
20 you with me?

21 A. That's correct.

22 Q. And then if you got 70 percent, you would be
23 looking at maybe \$1,500, 15, \$1,600. Are you suggesting
24 that it wouldn't be worth your while, and in general,
25 class members' while to file claims where they could have

1 potential payouts of between 500 and 15, 16, \$1,700?

2 A. No, I don't think that was what I said at all.
3 What I said was at \$500, it -- it would barely be worth my
4 time. I didn't say I wouldn't file it, and I can't --
5 can't speak to whether it would be worth anyone else's
6 time, but that's -- that's all I have.

7 Q. Okay. And just using the \$500 number, you
8 really think that number is such a low number that it
9 would not be worth class members' while to -- reasonable
10 class members' while to go file claims for -- for amounts
11 of like \$500?

12 A. It would really depend on the individual class
13 member's situation. I can see the case where a lot of
14 people would find that not worth their effort to deal
15 with -- with this process.

16 Q. You've probably seen or heard about class
17 recoveries where class members might get five dollars or
18 ten dollars or -- or a five dollar off coupon. You've --
19 you've heard of those kinds of settlements, right?

20 A. Oh, yes, I've received five dollar -- or four
21 dollars from the Naked Juice Company, but I didn't have to
22 fill out a 12-page form and provide my insurance
23 information to get it.

24 Q. Yeah, okay. And I'll -- I'll -- I'll move on.
25 So you mention an objection about the correlation between

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1 the payments to class members and the attorneys' fees that
2 would -- that are being sought and that would be paid; is
3 that right? You think there should be some correlation?

4 A. Yes, that's typical --

5 Q. Okay.

6 A. -- in class action cases and in most contingent
7 cases that it -- my humble understanding as a layman.

8 Q. Okay. And do you know that the request for
9 attorneys' fees that we have made is approximately
10 30 percent of the 43 million dollar recovery?

11 A. If the 43 million dollars is actually paid out,
12 then that would seem to be within what some consider
13 reasonable.

14 Q. Okay. Instead of talking about some, let's talk
15 about you, Jeffrey Palmer. If 43 million dollars is paid
16 out, is the 30 percent request unreasonable in your view?
17 Is that what you're objecting to? Let's -- let's stick
18 with this. If the 43 million is paid out, are you going
19 to be telling the court, I still object to a 30 percent
20 payment for attorneys' fees?

21 A. I think the standard would be closer to
22 25 percent, especially when you're looking at -- at cases
23 of this magnitude.

24 Q. So -- so I'm hearing a couple of things, but one
25 thing I -- I think I'm hearing you from you is that if 43

1 million is paid out, you think 25 percent is reasonable,
2 but you think maybe 30 percent is a little bit too much.
3 Is that -- is that where your head is at for this?

4 A. I -- I would say that seems to be a pretty fair
5 assess -- assessment of what I'm thinking. I -- my other
6 objection, though, is it doesn't appear likely that the
7 43 million is going to be paid out. And my -- the other
8 objection I have is the fact that it's entirely possible
9 for something greatly less than 43 million to ever be paid
10 out on this -- on this settlement.

11 Q. Okay. Before we move on to that issue, let's
12 talk about this 25, 30 percent gap. When you talked about
13 what was typical or standard of -- of percentages in class
14 actions, is that something that you have any independent
15 knowledge of, or is that just something you may have heard
16 either from your brother or from Mr. Bandas or from some
17 other objector attorney?

18 A. Well, I've spoken to them, but I've also seen
19 documents on other class actions cases and read through
20 them. I -- I'm -- I'm probably not typical to the average
21 person in that I -- I have this weird ability to read
22 legal documents, and it usually makes some sense to me.

23 Q. Well, then, have you read enough to know that
24 there are legal standards that allow judges to give a
25 little more than the 25 percent or a little less when the

1 judges take into consideration various factors? Do you --
2 do you know enough to understand that?

3 A. I -- I -- I think if you look closely at the
4 objection that I read this morning, some of that is pretty
5 clearly stated that, yes, there are factors where
6 sometimes it is okay to take more than that or expected to
7 take more than that.

8 Q. Did you go to a settlement website or get from
9 your attorneys the motion for attorneys' fees that class
10 counsel filed before you filed your objection?

11 A. No, I have not looked at that particular motion.

12 Q. And did you look at the attorneys' fees motion
13 even after you filed your objection?

14 A. I don't know that I've seen the actual motion
15 filed with the court, just the documents within the
16 settlement, proposed settlement.

17 Q. You mean the document like the notice and the
18 FAQs on the website?

19 A. No, I mean the -- the notice of class action
20 settlement.

21 Q. Okay. Generally the FAQs or frequently asked
22 questions are also called a notice, so is that what you're
23 referring to?

24 A. I'm referring to the document I have in front of
25 me that says notice of class action settlement that does

1 have questions in it that I suppose could be what you're
2 referring to as FAQs.

3 Q. Okay. And just so we're clear, what document
4 that's in front of you are you talking about?

5 A. Notice of class action settlement.

6 Q. Okay. And that is -- that is something that has
7 not been marked, but that you have brought with you; is
8 that right?

9 A. I -- I have seen. I just happen to have a copy
10 with me, yes. And I'm sure you --

11 Q. So why don't we attach that as --

12 A. I'm sure you have a copy that you have, but
13 you're asking me where I --

14 Q. Sure. What --

15 A. -- where I saw that, and I am answering your
16 question as to where I saw that. I'm sorry that it's not
17 in a document you produced.

18 Q. That's okay. Why don't we just have the court
19 reporter mark that as Exhibit 3 just so there's clarity on
20 the record what it was. Is it okay if you leave that
21 here? There's no -- you don't have any handwritten notes
22 from your attorney on that document, do you?

23 A. No, I don't.

24 Q. So unless there's objection, why don't we mark
25 that just so -- just so there's no misunderstanding as to

1 what you were talking about. Is that okay? The court
2 reporter will give you a sticker for that.

3 A. Sure, that would be fine with me.

4 Q. Okay. Thank you.

5 (Exhibit No. 3 marked)

6 THE REPORTER: Exhibit 3 has been marked.

7 A. I'll staple this together.

8 Q. (BY MR. SCHWARTZ) Okay. When the issue of
9 whether or not the 43 million maximum settlement fund will
10 actually be paid out, do you have any information about
11 the likelihood of the number of claims and the value of
12 claims that will be submitted and approved and the
13 likelihood that the 43 million will either be exhausted or
14 nearly exhausted? Do you have any information about that
15 that allows you to speak to that with any degree of
16 certainty one way or the other?

17 A. No, and that's one of my issues with it is that
18 there's been no documentation or -- or appear to have been
19 any research on that subject at all. I would like -- love
20 to see some documentation to that regard.

21 Q. Are you saying that you have an open mind about
22 it, and you would love to see some documentation to see if
23 you could be convinced one way or the other? Maybe I
24 should ask the question this way. Are you the type of
25 person who reaches an opinion and sticks to the opinion no

1 matter what information you learn in the future, or is --
2 or are you the type of person who is willing to reevaluate
3 your opinion on various things as new information becomes
4 available?

5 A. If you're asking if I'm reasonable person that
6 looks at all the facts, I would say, yes, I'm a reasonable
7 person that looks at all the facts, whether they be new or
8 old.

9 Q. Okay. And in connection with your objection,
10 you -- I -- I think you just said that you would be
11 interested in seeing information, more information, that
12 you don't think has been presented before that would give
13 you more insight as to what the likely number of claims or
14 payout would be. Is that -- is that something that
15 you're -- that as you sit here today you're still
16 interested in -- in learning about as you evaluate whether
17 or not you continue to prosecute your objection?

18 A. That's information that would be valuable. I
19 would say that.

20 Q. Is that one of the reasons why you -- you filed
21 your objection because you didn't think that information
22 was available?

23 A. I would say the lack of that information factors
24 into the -- the entire objection.

25 Q. Did you look for any such information as part of

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1 the work you did in deciding to pull the trigger and file
2 your objection?

3 A. I would have to say that I relied on that --
4 largely on my attorneys' research when it comes to that
5 information and also relied on the information in the form
6 that was just marked as Exhibit 3.

7 Q. Before you filed your objection, how much time
8 did you spend talking with your attorneys on the substance
9 of what your objections would be?

10 A. It would be difficult to put an actual number on
11 it. I know that over the process of a couple of days, I
12 spent a good deal of time working on the forms, looking at
13 the class notice, a dozen phone calls at least back and
14 forth between myself and Mr. Clore and quite a few e-mails
15 back and forth on the subject. I would have to pull my --

16 Q. Did you --

17 A. -- computer out to see.

18 Q. I'm sorry. Did you review and edit any drafts
19 of the actual objection that was filed, not the claim
20 form, not your declaration, but the actual objection that
21 was filed?

22 A. Yes, as a matter of fact, I did. I -- I made
23 some comments and some notes for Mr. Clore and some
24 revisions that were made -- made as a result of reviewing
25 those documents.

1 Q. Okay. Now, since your objection has been filed,
2 you've remained in contact with your attorneys about your
3 objection, right?

4 A. Yes. It hasn't been very long since it's been
5 filed, so, yes. I haven't called them every day, if
6 that's what you're asking, but, no, I -- I certainly
7 remain in contact with them.

8 Q. Do you know whether besides your objection there
9 are any other objections to the settlement?

10 A. It's my understanding that there were two other
11 objections, but as to the specifics of those objections, I
12 really don't have any information.

13 Q. Do you know whether -- what, if anything, can
14 you tell me about who -- I don't mean the name, but the
15 type of person or type of entity that filed those
16 objections and what those are, or what -- what can you
17 tell me about what you -- you -- you know about that as
18 you're sitting here?

19 A. Really as much as I know is that there were a
20 couple of other objections filed. I -- I may have heard
21 other discussion, but I don't really recall a lot. It
22 wasn't important enough to me as it relates to this
23 objection.

24 Q. Do you know whether there have been any
25 objections filed claiming that the 43 million is not

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1 enough and, in fact, that the claims will be sufficient to
2 exhaust the 43 million dollars?

3 A. No, that wouldn't be -- wouldn't be something
4 that I would need to know.

5 Q. Well, I -- I thought you just said that you --
6 you would be interested in information as to whether the
7 43 million will be exhausted to make sure that the class
8 action lawyers aren't getting paid a percentage of an
9 amount that won't actually be paid to class members.

10 So I'm just trying to figure out whether --
11 whether you've received any information or learned from
12 anywhere that there were objections filed suggesting that,
13 if anything, the 43 million dollars is not enough to pay
14 people 70 percent of their damages and, therefore, the --
15 the fund would be exhausted.

16 A. I -- it sounds like you're asking me if -- if I
17 would be willing or if I think someone else's objection is
18 sufficient if they're objecting to the same thing but
19 don't necessarily have that on the list. I -- the
20 question seems confusing and not necessarily relevant,
21 but, no, I'm -- I'm not aware of what anyone else's
22 objections are specifically. And I -- I don't know that
23 it would have a lot of bearing on my objection. That's up
24 to the judge to look at the objections and decide whether
25 each one has merit. That's really not my place to -- to

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1 be involved in that.

2 Q. Right, and just to be clear, because I don't --
3 I want to make sure you fully understand what I'm asking.
4 I think you've answered my question, but I just want to
5 make sure.

6 I have a very specific question, which is
7 whether you are aware from any source, whether it's from
8 our own research or from your attorneys, whether you are
9 aware that there were other objections filed saying that
10 the 43 million dollars was not enough to pay everyone who
11 had a valid claim 70 percent and, therefore, the fund
12 would be exhausted. I think you answered you're not aware
13 of that. I just want to make sure that -- that that's
14 correct, that you're not aware of such objection.

15 A. No, I'm not specifically aware of such an
16 objection.

17 Q. And is it also true that you're not aware that a
18 large builder and a large plumbing company filed such an
19 objection saying that they believed that there are a lot
20 of failures out there and there will be a lot of claims,
21 and they've raised concerns that the 43 million dollars
22 would basically be exhausted? Are you not aware of that?

23 A. No, I'm not aware of that.

24 Q. Okay. And I -- I -- I think in one of your
25 answers, you said it was really for the judge to weigh the

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1 evidence, to make evaluation as to whether or not what the
2 likelihood is that 50 percent or 80 percent or 100 percent
3 or 10 percent of the -- of the 43 million would eventually
4 go to class members. Is that -- is that -- is that a
5 process that you would expect the judge to do in making
6 the decision on attorneys' fees?

7 A. I would say there's an entire process involved
8 in determining those fees. Part of that process is the
9 judge's discretion. Part of that process is class
10 members, such as myself, filing objections when they feel
11 that things are not in keeping with what would be
12 reasonable. I feel like I'm part of that process as well.

13 Q. Okay. Why don't we mark as Exhibit 4 the
14 objections you filed. The court reporter has that
15 already. I believe you have your own copy, but why don't
16 we have the court reporter mark the copy she has. And
17 you'll let me know if this is your objection.

18 (Exhibit No. 4 marked)

19 THE REPORTER: Exhibit 4 has been marked.

20 Q. (BY MR. SCHWARTZ) And this is Document 184 on
21 the court filing system. We've marked it as Exhibit 4.
22 Mr. Palmer, can you identify this as your objection?

23 A. At surface, it appears to be such.

24 Q. And if you'll take a look at the second-to-last
25 page, it's Page 32 of the document, just confirm that is

1 your actual signature.

2 A. Yes, that is.

3 Q. And did you put your signature on that and then,
4 what, e-mail a -- e-mail a PDF of that over to your
5 counsel? How did you get your signature to counsel?

6 A. I signed that with a felt tip and marking pen,
7 scanned it in on my computer, converted it to a PDF
8 document, and then forwarded it to my attorneys. So, yes,
9 that is indeed my true signature.

10 Q. You didn't go through a process where some
11 attorney signed the document for you?

12 A. No, that -- that would be unethical.

13 Q. Why do you say that?

14 A. Because I'm stating that that's my signature,
15 and I just told you that, and then you're asking me if
16 someone else signed it. No, I signed it. I just -- I
17 just answered your question, and you're asking it again.
18 It seems -- it seems like you're questioning my integrity
19 to ask the question the second time when I just told you I
20 signed it with a pen, scanned it in, and then you asked me
21 if I had someone else sign it. That's -- that's -- that's
22 offensive to me.

23 Q. Okay. Well, sir, I was not actually asking that
24 question to -- to make a challenge to your integrity, so I
25 just state that I hope you appreciate that there are

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1 reasons why we ask questions, and sometimes there are
2 reasons why we ask questions more than once for reasons
3 that may not be apparent to a non-lawyer or even to
4 lawyers. So I just want you to know that I was not
5 assaulting your integrity on that issue, but there was
6 another reason why I asked that, which is because I'm
7 curious to know if you have any information from any
8 source about whether your brother, Darrell Palmer, has
9 signed people's names to objections and filed them with
10 courts in cases where the people on whose objections were
11 purportedly filed came later and said, That's not my
12 signature, and I didn't authorize this.

13 Are you aware of anything like that with respect
14 to your brother, Darrell Palmer?

15 A. I've stated in the past I'm not privy to my
16 brother's legal practice and certainly haven't inspected
17 any documents he's filed with the court. I haven't had
18 any contact with his other clients, so I would say, no, I
19 have no knowledge of -- of any events like that.

20 Q. But what I've described does not sound like an
21 ethical practice to you, does it?

22 A. It would depend entirely upon the circumstance.

23 Q. And how about with regard to the Bandas Law
24 Firm? Do you know whether or not any former clients have
25 accused the Bandas Law Firm of signing their names on

1 objections without getting authority from those clients?

2 A. No, I certainly would have no knowledge of
3 anything like that.

4 Q. Is that the kind of information you might be
5 interested in in evaluating whether or not you made a good
6 choice of counsel?

7 A. I would say the thing that would interest me in
8 evaluating whether I made a good choice of counsel is how
9 they're handling my case. How they've handled other cases
10 may have some significance, but the greatest significance
11 is whether they've done a fair job of handling this case
12 for me.

13 Q. Okay. On Exhibit 4, which is your objection, I
14 think you said this before, but you -- you carefully read
15 this and made edits that you felt were necessary before it
16 was filed, and you're satisfied that while you're not a
17 legal expert, you're satisfied that statements made in
18 this document are accurate to the best of your knowledge;
19 is that fair?

20 A. That would be a fair statement.

21 Q. And -- and I'm not suggesting that you -- you're
22 a legal expert. They're just what I call factual
23 statements. Okay.

24 A. Excuse me. Would -- would it be okay to take a
25 short break here for a minute?

1 Q. Oh, sure, we can take a break whenever, so let's
2 take another five minutes. Okay.

3 A. Okay. That would be great.

4 Q. Okay. Not a problem.

5 (Recess from 12:22 p.m. to 12:28 p.m.)

6 MR. SCHWARTZ: Let's go back on the record.

7 A. Okay.

8 Q. (BY MR. SCHWARTZ) And I just want to talk about
9 a few things that -- in your objection that we've marked
10 as Exhibit 4. If you can first look to Page 13 of the
11 document. At the very top, the -- the first sentence
12 says, There is every reason to believe that 13 million in
13 attorneys' fees will exceed class recovery in claims made
14 reversionary settlement with no floor. Do you see that?

15 A. Yes, I do.

16 Q. And I just want to get a sense of whether
17 there's any analysis or factual basis for this statement
18 that there's every reason to believe that 13 million in
19 attorneys' fees will be more than what will actually be
20 paid out to class members or whether maybe that -- that
21 statement, There's every reason to believe, is a little
22 bit of an overstatement in your view. I just want to get
23 your -- your -- your response to that.

24 A. I wouldn't say that I feel that's an
25 overstatement. Again, in my layman's opinion, I don't

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1 believe you'll see that many claims on this because the
2 process is cumbersome. I know we just spent an hour going
3 over your claim form, but I -- I still feel that it could
4 use a lot of revision to make it more user friendly. And
5 I think it's going to deter a lot of people, and I think
6 it's very likely that there are people that will not fill
7 your form out correctly and be rejected and probably not
8 feel that -- willing to go through the process, the
9 appeals process, after their claim is rejected.

10 I also feel that there just isn't enough data or
11 enough information to give us an accurate assessment of
12 how many claims will be made, but in -- in my humble
13 layman's opinion, I don't feel that it's likely that there
14 will be that many claims, at least not enough to reach the
15 13 million.

16 And I think the attorneys' fees should be
17 reasonably tied to the actual settlement, not, well, this
18 is the cap of the settlement, and if we get enough claims,
19 we'll pay this much, but let's pay you anyway. That --
20 that does not seem fair or reasonable to the class at
21 large, or just in general, it doesn't seem fair.

22 Q. In terms of your statement in that answer that
23 there's not enough data, besides everything else you've
24 told us today, have you personally undertaken any steps to
25 see what data is available on the issues of the number of

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1 claims and likelihood of the amounts of payout?

2 A. The only place I would be able to find such data
3 would probably be from research done during your -- your
4 process of prosecuting this suit. And I haven't seen
5 anything provided in the -- the settlement agreement, and
6 that's where I would expect to at least see some reference
7 to such data. So, no, I have not done any other research.
8 I'm not sure where I would look to find any other research
9 on that. That is not an area where I have great
10 expertise.

11 Q. On Page 16 of the claim form -- of -- of the --
12 of your objection, at the very last paragraph at the
13 bottom, there's an objection that the claim form is
14 necess -- unnecessarily invasive of class members'
15 privacy. Do you see that?

16 A. Yes, I do.

17 Q. Now, you see the second sen -- sentence after
18 that talks about the homeowner's insurance company, and we
19 talked about that already. But the first sentence after
20 that says, There's no reason they should have to list
21 their date of birth to establish they have a covered
22 product. What is your objection there?

23 A. I don't understand why it is necessary to know
24 how old I am to determine whether or not I have a covered
25 product. As long -- as long as someone is willing to

1 state that, yes, I'm over 18 years of age and have the
2 legal ability to make this claim, anything beyond that is,
3 no offense, frankly none of your business.

4 Q. Okay. And if you could take a look at Exhibit 2
5 again. This is the claim form. Actually it's your
6 declaration which has the claim form. If you can take a
7 look at Exhibit 2 and the claim form, where did you list
8 your date of birth on the claim form?

9 A. You know what, I cannot find that. So your --
10 perhaps there may be one sentence in this entire objection
11 that would be worthy of disregarding.

12 Q. Well, that -- that -- that's what I'm trying to
13 figure out. Do you have any recollection that you had to
14 list your date of birth as part of your claim?

15 A. Well, clearly if it's not on the form, I
16 misunderstood something that was being asked.

17 Q. Well, when you filed this objection, did you
18 have some belief or recollection that you had been
19 required to list your date of birth, and that's why you
20 have it included in there? Is that why it's in there, or
21 I'm trying to figure out why that's in there. So what --
22 what can you tell me about that?

23 A. Well, I would say that there's the possibility
24 that an error was made. I'm sure that's something that
25 does not often happen in your office, but it does

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1 occasionally happen in mine.

2 Q. Did you -- I'm just trying to figure out what
3 you think the mistake might have been. Do you -- do you
4 think the mistake was you thought you had to put in your
5 date of birth, and that's why when you saw this in the
6 draft objection, you didn't edit it out, or did you not
7 review this sentence and think about it? Do you have
8 any -- anything you can tell me as to how this mistake may
9 have happened in this objection?

10 A. Well, clearly the -- the statement within the
11 objection does not cause any damage because I would still
12 agree with the statement that there's no reason we
13 would -- someone should have to list their date of birth,
14 but it -- it seems to be a superfluous statement if your
15 form is not asking for a date of birth, so it doesn't seem
16 to cause any harm anywhere. It just was a statement put
17 in that was perhaps unnecessary. I --

18 Q. I think you answered something that wasn't quite
19 my question. I'm -- I'm just trying to drill down how
20 that statement was put into this objection. Is that
21 something that the lawyers put in and you just missed when
22 you were reviewing it and forgot to say, Oh, you never had
23 to do that, or is that something that was put in because
24 you mistakenly thought you had to put your date of birth
25 in? I'm just trying to figure out how this mistake

1 happened --

2 A. You know, specifically I don't --

3 Q. -- not whether it's relevant or -- or -- not
4 whether it's relevant or important. I just want to try to
5 figure out how this mistake happened if you can shed light
6 on that.

7 A. Well, if you're not certain if it's relevant or
8 important, then I'm not sure what the ques -- why the
9 question is being asked. But to answer the question,
10 specifically I don't recall if the thought was first
11 brought up in conversation by myself or Mr. Clore. I know
12 that we discussed it. It may easily have been me
13 misunderstanding the form, and neither one of us having
14 carefully checked the form again after that.

15 I -- I would be less than shocked to find that
16 such mistakes are -- are ever made in any legal
17 proceedings. But, again, like you said, it's not a matter
18 of whether it's important or malicious or anything of that
19 nature. It's -- it's an extremely minor point, not
20 something egregious to color the objection poorly, I would
21 not think.

22 Q. And -- and do -- do you have some recollection
23 that you're referring to of at least discussing the topic
24 of the date of birth being a required piece of information
25 with your lawyers, or are you just speculating when you

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1 said that?

2 A. I recall the subject having come up, and I think
3 I already stated that I don't recall whether it was myself
4 or Mr. Clore that first brought it up. It likely was
5 myself. Just looking at the onerous nature of the form,
6 it would not be surprising at all to find that they asked
7 for a date of birth.

8 It sounds like you're trying to determine
9 whether I initially brought it up or the Bandas Law Firm
10 brought it up. And quite frankly, I can't answer that.

11 Q. Okay.

12 MR. SCHWARTZ: Let's mark as Exhibit 5
13 Plaintiffs' Memorandum of Law in support of Plaintiffs'
14 Motion for Preliminary Settlement Approval and Related
15 Relief.

16 (Exhibit No. 5 marked)

17 THE REPORTER: Exhibit 5 has been marked.

18 Q. (BY MR. SCHWARTZ) And so this Exhibit Number 5
19 is docket entry Number 173-H on the court's ECF system.
20 This is one of those documents that was posted on the
21 settlement website. I just want to verify, I think you
22 testified that you have not seen this document before, but
23 just tell me whether I'm right or wrong. Have you seen
24 this document before?

25 A. I don't recall specifically having seen this

1 document, but I wouldn't unequivocally say that I haven't.

2 Q. Okay. I just want to ask you a few things
3 that -- that's referenced in this document. If you just
4 start off on Page 1 on the --

5 A. Where the introductory statement is?

6 Q. Yeah, it's right under there. So the first
7 sentence refers to hotly contested litigation. Do you see
8 that?

9 A. Uh-huh.

10 Q. You -- do you have any basis to dispute that
11 this was a hotly contested litigation?

12 A. I have no basis to dispute or confirm anything
13 about the nature of your litigation.

14 Q. And it next says there were seven in-person
15 mediations sessions before one or both of a retired United
16 States district court judge and a second experienced
17 private mediator.

18 Do you have any basis to dispute that that
19 statement is accurate?

20 A. No, I certainly would not. I mean, I have no --
21 I have no -- no direct knowledge of any of these things
22 other than what you've written here.

23 Q. You don't believe that we were lying when we
24 said that in this document that was filed with the court,
25 do you? I mean, if you do, you can say so. I just want

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1 to know whether -- whether you think that that factual
2 statement is inaccurate --

3 A. It was --

4 Q. -- in your mind?

5 A. It was equally factual to the placement of my
6 signature on a prior document.

7 Q. Let's go to Page 5.

8 A. Let -- let me rephrase. I can only assume that
9 it was factual.

10 Q. Okay. That's fair. Do you understand that
11 class action attorneys, the Plaintiffs' counsel, filed
12 declarations under oath, similar to your declaration,
13 providing factual and evidentiary support for the
14 statements that they made to the court? Are you aware of
15 that?

16 A. Well, I'm aware of that now. It's not something
17 I would have ever perused or looked at or been aware of
18 or -- specifically, but it seems like a reasonable
19 statement to me.

20 Q. And -- and understanding that you haven't
21 obviously gone and researched what may be in those
22 declarations under oath or tried to go do some sleuthing
23 as to the facts underneath it, I just want to make sure
24 that as you sit here today, you don't -- you personally
25 don't have any basis to think that any of the Plaintiffs'

1 lawyers who submitted a declaration to the court under
2 oath lied in those declarations; is that fair?

3 A. I really -- I have no ability to speak to the
4 character of those documents or to the declarations or to
5 whether they were factual or not. I have no knowledge
6 whether they were or were not factual. I can only assume
7 that they were factual, as they were sworn to before a
8 supreme court -- or a federal court judge.

9 Q. Okay. So on Page 5 of -- of this document,
10 heading B, the voluminous fact and expert discovery taken
11 by the parties, do you have any basis to dispute the fact
12 that there was an extensive degree of fact discovery,
13 including depositions and expert discovery, that the
14 various parties, the respective parties, submitted various
15 expert reports? Do you have any basis to dispute that
16 happened in this case?

17 A. No, I have no basis to dispute that, but I have
18 not been given time to look at this document and read the
19 page that you're asking me questions about or anything
20 else. So it seems almost superfluous that you put this in
21 front of me.

22 Q. Okay. If you look at Page 26, the first full
23 paragraph talks about the notice plan. And if you look
24 down towards the middle of that paragraph, there's a
25 sentence right be -- right after it says to reach as many

1 settlement class members as is reasonably possible, it
2 says, To do that, the notice plan also emphasizes
3 notifying plumbers, who, though not the class, often play
4 a role in the installation of covered product in premises
5 of settlement class members and could notify their
6 customers of the settlement.

7 You don't have, as you've answered with respect
8 to other parts of this -- this document, you don't have
9 any basis to dispute the accuracy of that statement, do
10 you?

11 A. I can't dispute that the plan notices emphasizes
12 notif -- emphasizes of notifying plumbers. I have no idea
13 whether that's been done or not, but the statement, the
14 way it's read, is not something that bears disagreement.

15 Q. Do you know whether an expert notice
16 administration submitted a declaration to the judge about
17 notice that was submitted to and then approved by the
18 judge in this case?

19 A. Not being an attorney and not having access to
20 the records of federal court, I would have no knowledge of
21 whether such notices were filed or not filed.

22 Q. When you say notices, you mean whether such a
23 declaration --

24 A. Or a declaration, excuse me, a declaration.

25 Q. -- that --

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1 A. That's correct.

2 Q. Okay.

3 A. Let -- let's suffice it to say for all further
4 questions that I have no information on what has or has
5 not been filed in this federal court with the court. I
6 have not gone through their files. I do not have any
7 knowledge or understanding of what has or has not been
8 filed with the federal court.

9 Q. With respect to the documents that were filed
10 with the federal court and were posted on the settlement
11 website in this case, can you tell me whether or not you
12 read each and every one of those court documents that was
13 posted on that website?

14 A. No, I'm sure I did not read each and every
15 single document that was posted on the website in relation
16 to this case.

17 Q. Mr. Palmer, those are all the questions I have
18 right now. So I thank you for coming, and I thank you for
19 being cooperative in this deposition. I don't know
20 whether NIBCO's counsel or your counsel have any
21 questions, but now it's their turn to ask questions if
22 they have any?

23 A. All right. Thank you for your courtesy.

24 MR. KENNEALLY: There are no questions from
25 NIBCO's counsel. Thank you, Mr. Palmer.

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1 THE WITNESS: Thank you, sir.

2 MS. GOLD: Hi, this is Janet Gold. I have no
3 questions.

4 THE WITNESS: All right. Thank you, Janet.

5 MR. SCHWARTZ: Okay. So -- so we are -- we are
6 done, so, again, thank you so much for coming, and I
7 appreciate it, and so the deposition is over.

8 (Deposition concluded at 12:51 p.m.)

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1	CORRECTIONS AND SIGNATURE			
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1 I, MR. JEFFREY P. PALMER, have read the foregoing
2 deposition and hereby affix my signature that same is true
3 and correct, except as noted above.

4 _____
MR. JEFFREY P. PALMER

5
6 THE STATE OF _____)

7 COUNTY OF _____)

8 Before me, _____, on this day
9 personally appeared MR. JEFFREY P. PALMER, known to me (or
10 proved to me under oath or through _____)
11 (description of identity card or other document) to be the
12 person whose name is subscribed to the foregoing
13 instrument and acknowledged to me that he executed the
14 same for the purposes and consideration therein expressed.

15 Given under my hand and seal of office this _____
16 day of _____, 2019.

17
18 _____
Notary Public in and for the State Of Texas

19 My commission expires: _____
20
21
22
23
24
25

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 Jeffrey Palmer
 March 20, 2019

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CERTIFICATION PURSUANT TO FEDERAL RULES

IN THE UNITED STATES DISTRICT COURT
 DISTRICT OF NEW JERSEY

KIMBERLY COLE, ALAN COLE,)
 JAMES MONICA, LINDA BOYD,)
 MICHAEL MCMAHON, RAY) CIVIL ACTION
 SMINKEY, JAMES MEDDERS,) NO. 13-7871-FLW-TJB
 JUDY MEDDERS, ROBERT)
 PEPERNO, SARAH PEPERNO,)
 KELLY MCCOY, LESA WATTS,)
 CHAD MEADOW, JOHN PLISKI,)
 SUSAN PLISKI, KENNETH)
 MCLAUGHLIN, RYAN KENNY,)
 ALEXANDER DAVIS, AND)
 ANDREA DAVIS, on behalf)
 of themselves and all)
 others similarly situated,))
 Plaintiffs,)
 VS.)
 NIBCO, INC.,)
 Defendant)

REPORTER'S CERTIFICATION

DEPOSITION OF MR. JEFFREY P. PALMER

MARCH 20, 2019

I, Carol A. Curtis, Certified Shorthand Reporter in
 and for the State of Texas, do hereby certify to the
 following:

That the witness, MR. JEFFREY P. PALMER, was sworn by
 the deposition officer and that the transcript of the oral
 deposition is a true record of the testimony given by the
 witness;

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1 I further certify that pursuant to Federal Rules of
2 Civil Procedure, Rule 30(e)(1)(A) and (B) as well as Rule
3 30(e)(2) that the signature of the deponent:

4 X was requested by the deponent and/or a party
5 before completion of the deposition and is to be returned
6 within 30 days from date of receipt of the transcript. If
7 returned, the attached Changes and Signature page contains
8 any changes and the reasons therefor;

9 was not requested by the deponent and/or a
10 party before the completion of the deposition.

11 I further certify that I am neither attorney nor
12 counsel for nor related to nor employed by any of the
13 parties to the action in which this deposition is taken;
14 Further, I am not a relative nor an employee of any
15 attorney of record in this cause, nor am I financially or
16 otherwise interested in the outcome of the action.

17 Subscribed and sworn to on this the 22nd day of
18 March, 2019.

19
20
21 *Carol A. Curtis*

22 Carol A. Curtis, Texas CSR 3202
Expiration 12/31/19
U.S. Legal Support
23 5910 N. Central Expressway, Suite 100
Dallas, Texas 75206
24 Telephone: (214) 741-6001
25 Registration No. 343

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EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

KIMBERLY COLE, *et al.*, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

NIBCO, INC.,

Defendant.

Civil Action No. 13-cv-7871 (FLW)(TJB)

-AND-

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

CHAD MEADOW, *et al.*, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

NIBCO, INC.,

Defendant.

Civil Action No. 3:15-cv-1124

AMENDMENT TO SETTLEMENT AGREEMENT

Plaintiffs in the above-captioned cases, *Cole, et al. v. NIBCO Inc.*, No. 13-cv-7871 (D.N.J.), and *Meadow, et al. v. NIBCO Inc.*, No. 15-cv-1124 (M.D. Tenn.) (collectively, the “**Litigation**”), and Defendant NIBCO Inc. (together with Plaintiffs, the “**Parties**”), hereby agree to amend the Settlement Agreement as set forth below.

WHEREAS, the Parties never intended that the term “Releasing Parties” as defined in Paragraph 34 of the Settlement Agreement would release any claims of members of the Settlement Class who timely opted out of the Settlement;

WHEREAS, the Parties wish to clarify the Settlement Agreement in this regard;

NOW, THEREFORE:

1. Pursuant to Paragraph VIII.B. of the Preliminary Approval Order, the Parties agree to amend Paragraph 34 of the Settlement Agreement to provide the following (with the amended language in bold):

34. **Release.** Upon the Effective Date, all Settlement Class Members, as well as any Person who receives any payment from the Net Settlement Fund, on behalf of themselves and their agents, heirs, executors and administrators, successors, assigns, insurers, attorneys, representatives, and any and all Persons who seek to claim through or in the name or right of any of them (**but excluding any Persons who timely opted out of the Settlement with regard to the buildings for which they opted out**) (the “Releasing Parties”), release and forever discharge (as by an instrument under seal without further act by any Person, and upon good and sufficient consideration), NIBCO, its administrators, insurers, reinsurers, agents, firms, parent companies/corporations, sister companies/corporations, subsidiaries and affiliates, and any sales agents and distributors, wholesalers, retailers, plumbers, homebuilders, contractors, engineers, architects, and any other product or service provider or any other party in the chain of distribution who distributed, specified, recommended, sold, and/or installed the Tubing, Fittings, and/or Clamps, and all of the foregoing Persons’ respective predecessors, successors, assigns and present and former officers, directors, shareholders, employees, agents, attorneys, and representatives (collectively, the “Released Parties”), from each and every claim of liability, on any legal or equitable ground whatsoever, including relief under federal law or the laws of any state, regarding or related to NIBCO’s Tubing, Fittings, and/or Clamps, including without limitation their design, manufacture, purchase, use, marketing, promotions, sale, or certification, and including without limitation all past, present, or future claims, damages, or liability on any legal or

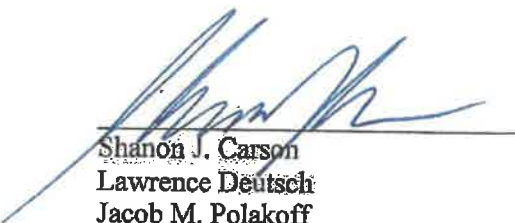
equitable ground whatsoever, and regardless of whether such claims might have been or might be brought directly, or through subrogation or assignment or otherwise, on account of or related to the Tubing, Fittings, and/or Clamps, which were alleged or could have been alleged in the Complaints filed in the Litigation. The Release is as a result of membership as a Settlement Class Member, status as Releasing Parties, the Court's approval process herein, and the occurrence of the Effective Date, and is not conditional on receipt of payment by any particular member of the Settlement Class or Releasing Party. Without in any way limiting its scope, and, except to the extent otherwise specified in the Settlement Agreement, the Release covers by example and without limitation, any and all claims for reasonable attorneys' fees, costs, expert fees, consultant fees, interest, litigation fees, costs, or any other fees, costs, and/or disbursements incurred by any attorneys, Class Counsel, Plaintiffs, Settlement Class Members, or any Releasing Party who claim to have assisted in conferring the benefits under this Settlement upon the Settlement Class. This Settlement Agreement and the Release provided for herein shall not and are not intended to release the claims of the Releasing Parties against the suppliers of raw materials, components, or ingredients used in the manufacture of the Tubing, Fittings, and/or Clamps, which the Releasing Parties hereby fully and forever assign, transfer, and convey to NIBCO. For purposes of any claims by NIBCO against the suppliers of raw materials, components, or ingredients used in the manufacture of the Tubing, Fittings, and/or Clamps, should such supplier seek to join any Releasing Party in such a claim, NIBCO shall defend, indemnify, and hold harmless the Releasing Party from any and all claims of any such supplier against the Releasing Party.

2. The Parties shall ask the Court to include the terms of Paragraph 34 as amended in its Final Approval Order.

3. In all other respects the terms of the Settlement Agreement are ratified, affirmed and remain the same.


**AGREED AND ENTERED INTO BY THE PARTIES AND THEIR RESPECTIVE
COUNSEL ON THE DATES SET FORTH BELOW:**

Dated: March 25, 2019



Shannon J. Carson
Lawrence Deutsch
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Dated: March 25, 2019



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Dated: March 25, 2019



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On behalf of NIBCO, Inc.